

**In The Matter Of:**

*Before the FCC - ~~Washington~~*  
*Application of Liberty Cable Co., Inc.*

---

*Peter O. Price*  
*May 28, 1996*

---

*Miller Reporting Company, Inc.*  
*507 C Street, N.E.*  
*Washington, DC 20002*  
*(202) 546-6666 FAX: (202) 546-1502*

*Original File 0528pric.asc, 283 Pages*  
*Min-U-Script® File ID: 0342586164*

**Word Index included with this report.**

Report No. 96-41 Exhibit 9  
Submitted by Liberty Bureau

Disposition { Identified ✓  
Received ✓  
Rejected       

Reporter 9  
Date 1-10-97

Page 1

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION

In re: Application of : WT Docket No.  
: 96-41

Liberty Cable Co., Inc. :

CONFIDENTIAL

Tuesday, May 28, 1996

Washington, D.C.

The deposition of PETER O. PRICE, called  
for examination by counsel for Time Warner Cable of  
New York City in the above-entitled matter,  
pursuant to notice, in the offices of Fieischman  
and Walsh, L.L.P., 1400 16th Street, N.W., Sixth  
Floor, Washington, D.C., convened at 9:35 a.m.,  
before David A. Kasdan, RPR, a notary public in and  
for the District of Columbia, when were present on  
behalf of the parties:

Page 2

APPEARANCES:

On behalf of the Applicant:

ELIOT L. SPITZER, ESQ.

ROBERT L. BEGLEITER, ESQ.

Constantine & Partners

909 Third Avenue

New York, NY 10022

(212) 350-2707

On behalf of Time Warner Cable of New York City:

BRUCE BECKNER, ESQ.

Fieischman and Walsh

1400 16th Street, N.W.

Sixth Floor

Washington, D.C. 20036

(202) 939-7900

On behalf of Cablevision of New York City-

Phase I:

CHRISTOPHER A. HOLT, ESQ.

Mintz Levin Cohen Ferris Glovsky & Popeo

701 Pennsylvania Avenue, N.W.

Washington, D.C. 20006

(202) 434-7300

On behalf of the Federal Communications

Commission:

JOSEPH PAUL WEBER, ESQ.

KATHERINE C. POWER, ESQ.

MARK L. KEAM, ESQ.

Enforcement Division

Federal Communications Commission

Wireless Telecommunications Bureau

2025 M Street, N.W.

Washington, D.C. 20554

(202) 418-0919

Page 3

CONTENTS

WITNESS EXAMINATION BY COUNSEL

PETER O. PRICE

By Mr. Beckner 4

By Mr. Weber 222

By Mr. Holt 273

EXHIBITS

NUMBER MARKED FOR IDENTIFICATION

Price No. 1 85

Price No. 2 107

Price No. 3 122

Price No. 4 171

Price No. 5 181

Price No. 6 184

Price No. 7 185

Price No. 8 197

Price No. 9 205

Price No. 10 212

Price No. 11 215

Price No. 12 219

Price No. 13 229

Price No. 14 232

Price No. 15 252

Page 4

PROCEEDINGS

Whereupon,

[1]  
[2]  
[3] PETER O. PRICE  
[4] was called for examination by counsel for Time  
[5] Warner Cable of New York City and, after having  
[6] been duly sworn by the notary public, was examined  
[7] and testified as follows:

EXAMINATION BY COUNSEL FOR  
TIME WARNER CABLE OF NEW YORK CITY

(Mr. Keam and Mr. Holt not present.)

BY MR. BECKNER:

[12] Q: Mr. Price, could you please state your  
[13] full name and place of residence for the record.  
[14] A: My name is Peter Price. I live in New  
[15] York City.

[16] Q: Are you presently employed, Mr. Price?

[17] A: Yes, I am.

[18] Q: Who is your employer?

[19] A: Liberty Cable.

[20] Q: What is your job title or description of  
[21] Liberty Cable?

[22] A: President.

Page 5

[1] Q: Mr. Price, do you have a college degree?  
[2] A: Yes, I do.  
[3] Q: And from what institution and in what  
[4] subject?  
[5] A: Princeton University Woodrow Wilson School  
[6] of International Affairs.  
[7] Q: What year was that?  
[8] A: 1962.  
[9] Q: Do you have any postgraduate education?  
[10] A: Yes.  
[11] Q: And in what subject?  
[12] A: Law.  
[13] Q: You have a law degree, sir?  
[14] A: Yes, I do.  
[15] Q: From what institution?  
[16] A: Yale Law School.  
[17] Q: What year did you receive that?  
[18] A: 1965.  
[19] Q: Upon graduation from Yale Law School, did  
[20] you go to work as an attorney?  
[21] A: Upon graduation I went into the Air Force.

Page 6

(1) line of the Air Force?  
(2) A: I was Chief of Security Police at an Air  
(3) Force Base.  
(4) Q: Different line of law enforcement?  
(5) A: Somewhat.  
(6) Q: Upon completion of your military service  
(7) with the Air Force, did you then become a  
(8) practicing attorney?  
(9) A: I was required by the Pennsylvania Bar to  
(10) take a clerkship period in order to become eligible  
(11) to be a member of the Bar in Pennsylvania. After  
(12) that clerkship, I did not enter the practice of  
(13) law, at least as it involves advising clients about  
(14) the law.  
(15) Q: So I take it you were admitted to the  
(16) Pennsylvania Bar?  
(17) A: That's correct.  
(18) Q: What kind of work did you do after you  
(19) completed your clerkship in Pennsylvania?  
(20) A: I worked for the Lindsay Administration in  
(21) New York City as what they called Counsel to the  
(22) Taxi Commission. I learned at that point that

Page 7

(1) being counsel did not necessarily mean being a  
(2) lawyer because you weren't representing anybody but  
(3) yourself.  
(4) Q: And just so we know what year we are  
(5) talking about, approximately what year was that?  
(6) A: That would have been the end-of-beginning  
(7) of '66, middle of '66, and around there.  
(8) Q: I'm not going to take you through your  
(9) entire work history, so I have a couple of  
(10) questions. One is, have you ever worked as a  
(11) practicing attorney?  
(12) A: No, I have not.  
(13) Q: Now, I think I read an affidavit that you  
(14) filed in another proceeding where you said you had  
(15) worked as a journalist; is that correct? Did you  
(16) work as a journalist?  
(17) A: Never.  
(18) Q: Aside from your work for Liberty Cable,  
(19) have you done any work for a company that's in the  
(20) television business? And by that I mean just not  
(21) necessarily cable, but broadcast TV or local  
(22) television station, for example?

Page 8

(1) A: No, I have not.  
(2) (Counsel confers with the witness.)  
(3) A: Counsel asked me to clarify, when I say  
(4) I'm not a journalist, I was publisher of the New  
(5) York Post, but publishers and editors know the  
(6) difference between those titles and I was not a  
(7) journalist. I was a publisher.  
(8) Q: I appreciated the clarification, and I  
(9) agree with your first answer that there is a  
(10) distinction between the guy that carries the note  
(11) pad in his back pocket and writes the story and the  
(12) guy that edits it and publishes it.  
(13) Let's just talk about your work at the New  
(14) York Post. When did you first go to work for them?  
(15) A: I believe it was 1987, if I remember the  
(16) precise date, but I believe it was '87, in around  
(17) there.  
(18) Q: And what was the position you had with the  
(19) Post when you started there?  
(20) A: Publisher.  
(21) Q: Had you had any previous experience in the  
(22) newspaper or magazine publishing business before

Page 9

(1) going to work for the Post?  
(2) A: Yes.  
(3) Q: And what was that?  
(4) A: I was the business manager, which is the  
(5) title for publisher, of an undergraduate newspaper,  
(6) The Daily Princetonian. So that was undergraduate.  
(7) I had a summer job at the Wall Street  
(8) Journal as an intern, and then I was an assistant  
(9) to the publisher of Life magazine, subscription  
(10) manager of Sports Illustrated.  
(11) I was Director of the Corporate  
(12) Development for Time, Incorporated, and I was and  
(13) am Chairman of Avenue magazine.  
(14) And also chairman of the board of trustees  
(15) for a while with the Princeton Tiger magazine, and  
(16) somewhere in my murky past I can't remember when  
(17) that was. And publisher of the National Sports  
(18) Daily somewhere along the way.  
(19) Q: What years were you Director of Corporate  
(20) Development for Time, Incorporated?  
(21) A: That would have been approximately '69,  
(22) '70, in about then.

Page 10

(1) Q: Did you have that position after you were  
(2) assistant to the publisher of Life magazine?  
(3) A: No. In between I was subscription manager  
(4) of Sports Illustrated magazine.  
(5) Q: How did you come to be employed as  
(6) President of Liberty Cable or the circumstances  
(7) that got you involved?  
(8) A: Through a conversation with the owner of  
(9) the company, Howard Milstein, at the beginning of  
(10) 1991.  
(11) Q: Were you acquainted with Mr. Milstein  
(12) socially prior to that?  
(13) A: No, I was not. He was an acquaintance. I  
(14) believe I had met him once briefly on the street,  
(15) so I don't think that qualifies as socializing.  
(16) Q: Was Liberty Cable then an operating  
(17) business?  
(18) A: Yes, it was.  
(19) Q: Who was running it at that time?  
(20) A: There was a consultant, I believe, who was  
(21) attending to it, named Bob Schwartz, was a  
(22) relatively small company. And I think Bob and

Page 11

(1) along with Tony Ontiveros, who was the general  
(2) manager—I think that was at least his title now  
(3) and I believe it was then—and a couple of other  
(4) executives.  
(5) Q: Did Mr. Howard Milstein recruit you for  
(6) the position?  
(7) A: I wouldn't say "recruit" is the right  
(8) word. We talked about the opportunity and agreed  
(9) it was a good idea. He hired me, but I'm not sure  
(10) he recruited me so much that we came to the  
(11) conclusion that it was a good idea through a  
(12) conversation.  
(13) Q: When Mr. Milstein, Mr. Howard Milstein,  
(14) hired you, did he tell you what he expected you to  
(15) do for the business?  
(16) A: I don't think there was a formalized  
(17) discussion of what the duties were. It was to  
(18) manage and grow the business. There were no  
(19) specifics attached to it. There may have been, but  
(20) it wasn't reduced to a piece of paper.  
(21) Q: Okay. I fit into my question to include  
(22) anything no matter how informal or oral in the

Page 12

[1] discussion you might have had with Howard Milstein.

[2] A: No. It was to grow the business.

[3] Q: At the time that you were hired, do you  
[4] know approximately how many customers Liberty  
[5] served?

[6] A: At that point, I believe it was in the  
[7] neighborhood of a few thousand. It was more than  
[8] 2,000, but less than 5,000, but it was in that  
[9] neighborhood.

[10] Q: What was the method by which Liberty was  
[11] serving its customers at the time you began work  
[12] there?

[13] A: It was a satellite master antenna, SMATV.  
[14] Satellite Master Television is what it stands for.

[15] Q: So at that time it was not using microwave  
[16] links to distribute its programming around  
[17] Manhattan?

[18] A: Not that I know of.

[19] Q: That was something that came later?

[20] A: Yes. Perhaps they did at one time, but I  
[21] wouldn't be involved in that.

[22] Q: As far as you know?

Page 13

[1] A: As far as I know.

[2] Q: Understood. Do you know when Liberty  
[3] Cable was first started?

[4] A: I believe it was in '86, but I wasn't  
[5] there, so I really don't know.

[6] Q: I understand you weren't there.  
[7] When you took the job as president of  
[8] Liberty Cable, did you within the first, say, six  
[9] months of your taking the job, institute any major  
[10] changes in the way the company was doing business?

[11] MR. SPITZER: Could you clarify that,  
[12] narrow it in any way? The breadth of that is  
[13] difficult. Do you want to focus on any aspect of  
[14] the business plan? It's very broad, and it will  
[15] would be helpful to the witness.

[16] MR. BECKNER: All right.

[17] BY MR. BECKNER:

[18] Q: In the first six months of your tenure as  
[19] president, did you increase the staff employed by  
[20] Liberty Cable?

[21] A: I may have increased the staff slightly,  
[22] but not significantly. There were no major

Page 14

[1] changes, as I recall, that I personally was  
[2] responsible for during that period. I was learning  
[3] the business. I had never been a cable TV operator  
[4] before, so I had a lot to learn.

[5] Q: Now, there came a time when Liberty began  
[6] to use microwave links.

[7] (Phone rings and off the record.)

[8] A: Yes.

[9] Q: Do you remember about what year that was?

[10] A: It was the beginning of 1992. I believe  
[11] it was spring of '92. It might have been February,  
[12] March, April, in that time period somewhere.

[13] Q: Do you know whose idea it was to begin  
[14] using microwave links to distribute Liberty's  
[15] program in New York?

[16] A: I don't know the paperwork was in motion  
[17] when I arrived at Liberty Cable, but I believe it  
[18] was general management consensus it was a good  
[19] idea. Who originated that thought or by name, I  
[20] don't know.

[21] Q: As part of the process of, I think,

Page 15

[1] through and you arrived at Liberty Cable, did  
[2] someone there educate you about what was involved  
[3] in using microwave links to distribute Liberty's  
[4] program in New York?

[5] A: In those first few months, we weren't  
[6] using microwave, so there really wasn't anything to  
[7] learn.

[8] Q: But I take it from your answer to the  
[9] previous question, I think as you put it, the  
[10] paperwork was in motion on the day you arrived; is  
[11] that correct?

[12] A: From what I learned, there was an  
[13] application made to access a particular frequency,  
[14] and that that application had been pending for a  
[15] while. And either when I arrived or shortly after  
[16] I arrived, it was granted. But as I understood it,  
[17] that was Federal authority for people to use this  
[18] frequency, but that frequency wasn't being used  
[19] when I arrived there. It was just edict from  
[20] Washington that yes, this was appropriate for use  
[21] by private cable operators.

[22] Q: So as far as you know, there was not a

Page 16

[1] specific application filed by Liberty pending at  
[2] the FCC to use these frequencies? It was a general  
[3] policy decision the Commission was making to make  
[4] them available?

[5] A: That's correct. At the time I arrived at  
[6] Liberty.

[7] Q: I take it at some point that, in fact,  
[8] Liberty did file its first applications to use  
[9] these frequencies; is that correct?

[10] A: That's correct.

[11] Q: And do you remember what year that was?

[12] A: I believe it was in the spring of '91  
[13] after there was Federal authority to file  
[14] applications, the process.

[15] Q: From an operational standpoint, did the  
[16] ability to use microwave links to transmit its  
[17] programming in New York, did Liberty have any  
[18] advantages that it had not had before?

[19] A: Yes. We saw it was a very efficient way  
[20] to distribute video programming as opposed to  
[21] building new satellite master antennas for each  
[22] additional building.

Page 17

[1] Q: Was there a cost difference between the  
[2] cost of building satellite receiving antennas on a  
[3] particular building versus building a microwave  
[4] receive antenna to receive microwave relay signal?

[5] A: Yes.

[6] Q: Do you know approximately what that  
[7] difference was?

[8] A: I think it depends upon the type of  
[9] satellite master antenna system you want to build.  
[10] You could build a simple one for a hundred-thousand  
[11] dollars. You could build in those days a more  
[12] complex one for \$300,000. The cost of the  
[13] accomplishing the same transmission via microwave  
[14] would be depending upon the property significantly  
[15] less than that.

[16] Q: Could you give me an order of magnitude?

[17] A: \$25,000 as opposed to six figures.

[18] Q: Now, was it your understanding from the  
[19] beginning of your involvement in working for  
[20] Liberty and your knowledge of the possibility that  
[21] microwave could be used, was it your understanding

Page 18

(1) turned on that you had to have a license from the  
(2) FCC to do that?  
(3) A: Yes.  
(4) Q: Now, do you have to have an FCC license to  
(5) build a SMATV system to put the antenna on the  
(6) roof?  
(7) A: Not that I'm aware of, but never during my  
(8) tenure did we build a Satellite Master Antenna  
(9) system. I can't speak to that because I have never  
(10) undertaken that job.  
(11) Q: To your knowledge, were the other  
(12) executives at Liberty whom you were working with,  
(13) were they also aware of the fact that an FCC  
(14) license was needed to operate a microwave system?  
(15) MR. SPITZER: Do you want to clarify who  
(16) those executives are?  
(17) MR. BECKNER: Executives is a term he  
(18) used.  
(19) MR. SPITZER: Let's lay a foundation.  
(20) THE WITNESS: There were people involved  
(21) in all types of activities there, so I think it  
(22) would be unfair to attribute them with knowledge

Page 19

(1) they might not have.  
(2) BY MR. BECKNER:  
(3) Q: When you arrived at Liberty, did you  
(4) observe that there were any-I don't want to use  
(5) the term "procedures," but I don't want to convey  
(6) an excessive degree of formality by using the term.  
(7) So, with that qualification, let me just  
(8) ask the question: Had you observed that there were  
(9) any procedures in place regulating or governing the  
(10) company's activity from the point when an agreement  
(11) was reached with a particular building for Liberty  
(12) to provide service to that building to the point  
(13) when Liberty was actually providing service to the  
(14) building and people who lived there or worked  
(15) there?  
(16) A: At the time I joined the company, there  
(17) were three or four Satellite Master Antenna systems  
(18) which had been in place, I believe, for several  
(19) years. The time I arrived, we weren't signing up  
(20) buildings for microwave reception because we hadn't  
(21) gotten into that mode yet, so there were definitely  
(22) not any procedures because we weren't engaged in

Page 20

(1) that line of business yet.  
(2) Q: By the time you arrived, was the company  
(3) soliciting to build additional SMATV systems?  
(4) A: Not that I know of. They may have been,  
(5) but I wasn't aware of it.  
(6) Q: Once the company understood that it had  
(7) the opportunity to distribute its programming by  
(8) means of microwave links, did Liberty then begin to  
(9) solicit buildings as customers for its service?  
(10) A: Yes, we did.  
(11) Q: And approximately when did this happen, if  
(12) you remember?  
(13) MR. SPITZER: That meaning the initial  
(14) solicitation?  
(15) MR. BECKNER: Correct.  
(16) THE WITNESS: I would believe it would  
(17) have been in the spring of '91. Precise date I  
(18) don't remember, but March, April, May, in that time  
(19) frame.  
(20) BY MR. BECKNER:  
(21) Q: Was that before or after the time you went  
(22) to work for Liberty, if you know?

Page 21

(1) A: After.  
(2) Q: So that was pretty shortly after when you  
(3) started work?  
(4) A: That's correct.  
(5) Q: So I take it, then, that in the spring of  
(6) 1991, on the assumption that it would receive  
(7) microwave licenses if it applied for them, Liberty  
(8) began to solicit buildings in New York to be  
(9) customers of its service; is that correct?  
(10) A: That's correct.  
(11) Q: Now, at that time or any time thereafter,  
(12) were a set of procedures put in place to govern the  
(13) steps that need to be taken from the solicitation  
(14) to the provision of service in a building?  
(15) A: At that time, no, there were not, because  
(16) we didn't know-we hadn't been able to determine  
(17) from the FCC what exactly the steps were. We had  
(18) merely submitted applications, but we weren't  
(19) familiar with the process yet, so we didn't have  
(20) the procedure because we were-no one had ever done  
(21) this before, the least that we were aware of, to  
(22) apply for these types of licenses.

Page 22

(1) So it was impossible to see enough of the  
(2) landscape to know what a procedure would look like.  
(3) (Mr. Holt comes in.)  
(4) MR. BECKNER: I note for the record the  
(5) gentleman who walked in is Christopher Holt, as you  
(6) heard me mention before, and he is counsel for  
(7) Cablevision.  
(8) BY MR. BECKNER:  
(9) Q: Let me just broaden that question a little  
(10) bit, Mr. Price, because I intended to refer not  
(11) merely to the application process, but to the whole  
(12) process involved in building whatever internal  
(13) wiring in a building needed to be constructed  
(14) within a particular building in providing residents  
(15) with converter boxes if they needed them.  
(16) A: We hadn't done it yet for the same reason  
(17) we hadn't yet installed a building in that time  
(18) frame in the spring of '91. We had no idea what we  
(19) would encounter in the way of internal wiring  
(20) issues. We were just getting to have our first  
(21) look at buildings. We hadn't constructed a  
(22) receiver on a roof, let alone received any kind of

Page 23

(1) permission from the FCC. So that's why we didn't  
(2) have a procedure. We didn't know what was in front  
(3) of us to write a procedure yet. It was empirical.  
(4) And there was no one to ask because no one had done  
(5) this before.  
(6) Q: At some point thereafter, did you either  
(7) develop a procedure or did a set of procedures  
(8) evolve, by habit, if nothing else, within the  
(9) company?  
(10) A: As we learned our way along, a set of  
(11) procedures developed, but they changed to meet the  
(12) circumstances because we were learning that the  
(13) reality of getting a building wired and getting a  
(14) license from the FCC was more complicated than it  
(15) appeared to be.  
(16) Q: When you were in any of the positions that  
(17) you held with newspapers and magazines prior to  
(18) working at Liberty, in any of those positions were  
(19) you involved at all with the editorial product as  
(20) opposed to, say, the advertising or the business  
(21) side of-  
(22) A: I was never a journalist, if that's the

Page 24

[1] question.

[2] Q: I understand that, and I guess the  
[3] question that I meant to ask was, were you ever  
[4] involved in, for example, in what appeared on the  
[5] opinion page, any kind of editorial opinion page or  
[6] something that might be in the New York Post, for  
[7] example?

[8] A: The publisher is generally the Chief  
[9] Executive Officer and is held responsible for what  
[10] the business does.

[11] Did I write editorials or attempt to  
[12] influence them? No. That was not my style.

[13] Q: Okay. When you were at the New York Post,  
[14] do you know whether or not the New York Post had  
[15] any kind of program or procedure, whatever you want  
[16] to call it, by which it would screen, prior to  
[17] publication, a particular article to make sure it  
[18] wasn't libelous, for example?

[19] A: Yes. Most respectable publications,  
[20] especially newspapers, go through that process.

[21] Q: And you were aware that there was such a  
[22] pre-publication review process at the Post?

Page 25

[1] A: Yes, I was.

[2] Q: And that's done as a general practice in  
[3] the publishing industry to avoid publishing  
[4] defamatory material, is that correct?

[5] A: Yes. Well, to make sure it's correct when  
[6] it's published.

[7] MR. SPITZER: Even if it's defamatory?

[8] THE WITNESS: It could be defamatory,  
[9] correct.

[10] BY MR. BECKNER:

[11] Q: At any of the publications where you  
[12] worked before you worked for Liberty Cable, was  
[13] there any kind of Equal Employment Opportunity  
[14] compliance program in place that you were aware of?

[15] A: At Time Incorporated, I'm not sure there  
[16] was. At the New York Post, yes, we had one. At  
[17] the National Sports Daily, I'm not sure we had one.  
[18] And at Avenue magazine, I believe there is one, but  
[19] I can't speak to Time Incorporated. I don't  
[20] believe they had such a program when I was there.  
[21] Maybe times have changed.

[22] Q: Now I'm going to ask you about the

Page 26

[1] responsibilities of particular individuals that you  
[2] have been advised worked at Liberty Cable, and the  
[3] time period that I want to refer to is the year  
[4] 1992, 1993, 1994, and 1995.

[5] So I'm not going to repeat that with every  
[6] question, if that's okay with you.

[7] A: I have the time frame.

[8] Q: However, if I ask about a particular  
[9] individual and that person's responsibilities  
[10] changed during the period, I would like you to tell  
[11] me that.

[12] A: I will.

[13] Q: Thank you. First, Howard Milstein. I  
[14] think you identified him before as an owner of the  
[15] business and the person who hired you.

[16] A: That's correct.

[17] Q: Does he have a particular title with the  
[18] company?

[19] A: With Liberty Cable?

[20] Q: Yes, sir.

[21] A: Chairman and Co-Chief Executive Officer.

Page 27

[1] period, what responsibilities, to your observation,  
[2] did Mr. Milstein appear to have at Liberty?

[3] A: Chairman and Co-Chief Executive Officer.

[4] Q: But in an operational or day-to-day sense,  
[5] was he involved with the business everyday or once  
[6] a week, to your observation?

[7] A: I would say once a week is fair. He has  
[8] general oversight, as a chairman does, and specific  
[9] involvement perhaps once a week.

[10] Q: Now, Mr. Milstein has other businesses  
[11] besides Liberty Cable that he's responsible for; is  
[12] that correct?

[13] A: Yes, he does.

[14] Q: Without getting specific dates involved,  
[15] real estate management ownership in New York City;  
[16] is that correct?

[17] A: That's correct. As well as finance, as  
[18] well as hotels, and I believe there are other  
[19] businesses he was involved in, but I'm not aware  
[20] precisely what all his other activities are, but  
[21] substantial activities.

[22] Q: So, to your knowledge, Liberty Cable was

Page 28

[1] just a portion of Mr. Howard Milstein's business  
[2] portfolio?

[3] A: That is correct. A small portion.

[4] Q: As president of the company, did you  
[5] report to Mr. Milstein?

[6] A: Yes, I did. And I do.

[7] Q: Now, again the same question with respect  
[8] to Edward Milstein. First, what position does he  
[9] have with Liberty Cable, if any?

[10] MR. SPITZER: Does he have or did he have  
[11] over this time period?

[12] MR. BECKNER: I qualified these questions  
[13] with a time period, and if there is a change--

[14] THE WITNESS: At the beginning he had no  
[15] definitive position with Liberty Cable. At some  
[16] point he became co-chairman of the company.

[17] BY MR. BECKNER:

[18] Q: And you don't remember when that was?

[19] A: No, I don't remember the precise date.

[20] Q: Now, you said that Howard Milstein was  
[21] Co-Chief Executive Officer, I believe.

[22] A: That's correct.

Page 29

[1] Q: Who was the other person who shared that  
[2] title with Howard Milstein?

[3] A: I shared it with him, and I do share it  
[4] with him.

[5] Q: Now, Edward Milstein, you said, became at  
[6] some point co-chairman.

[7] A: I believe he was vice chairman and  
[8] co-chairman.

[9] Q: Was he co-chairman with Howard Milstein?

[10] A: That's correct.

[11] Q: Are those two gentlemen brothers?

[12] A: Yes.

[13] Q: Now, as I asked you with respect to Howard  
[14] Milstein, can you tell me how much involvement  
[15] Edward Milstein had with Liberty Cable business, to  
[16] your observation?

[17] A: He was more active, he is more actively  
[18] involved with Howard, but that is not a substantial  
[19] proportion of his responsibilities. He shares all  
[20] those other corporate involvements with his  
[21] brother, I believe. So the minority of his time

Page 30

[1] Howard Milstein.

[2] It could vary. Some weeks he would be  
[3] intensely involved because we were involved in the  
[4] project, and then would not be involved for a week,  
[5] but on the average it was more than Howard  
[6] Milstein.

[7] Q: Did you report to Edward Milstein also?

[8] A: I reported directly to Howard, but since  
[9] Edward was a co-owner of the business, I also  
[10] reported to Edward.

[11] Q: And would it be correct to say that, for  
[12] example, if Edward Milstein asked you to do  
[13] something, you didn't feel the need to check with  
[14] Howard before you did it?

[15] A: That's correct.

[16] Q: Now, aside from Howard and Edward Milstein  
[17] and yourself, during the time period that I  
[18] specified, was there any other person who had a  
[19] general oversight responsibility for the entire  
[20] business as opposed to the discrete portions of it?

[21] A: No, there was not.

[22] Q: Would it be okay with you if I referred to

Page 31

[1] you and Howard and Edward Milstein as the senior  
[2] management of Liberty?

[3] A: That's fair.

[4] Q: Is that a fair description?

[5] A: Yes.

[6] Q: Now, you mentioned a person you described  
[7] as a consultant named Bob Schwartz, who I think you  
[8] said was running Liberty Cable when you came to  
[9] work there.

[10] A: He was managing the Satellite Master  
[11] Antenna Television business, primarily the  
[12] secretary side of it.

[13] Q: Did he continue his relationship with  
[14] Liberty after you took over as president, or did  
[15] his relationship--

[16] A: There was a period of time, approximately  
[17] a year, when he continued to be actively involved  
[18] in the business as a consultant, and then a period  
[19] of time after that where he was available but less  
[20] involved.

[21] Q: Before I ask the next series of questions,  
[22] I'm going to modify the time period slightly for

Page 32

[1] 1995. I want you to tell me only about the first  
[2] half of 1995, not the entire year.

[3] As I understand, there were a number of  
[4] personnel changes that took place late in the year  
[5] in 1995. For this time period that I have now  
[6] specified and modified, could you tell me who were  
[7] the people that reported directly to you at Liberty  
[8] Cable?

[9] A: I'm trying to recall when Bertina left,  
[10] Bertina Ceccarelli, because I believe it was  
[11] approximately in the spring, perhaps, when Bertina  
[12] Ceccarelli left. But functionally the people who  
[13] reported to me were the marketing director who was  
[14] Bertina Ceccarelli.

[15] She was succeeded by Jennifer Walden, who  
[16] worked for Bertina, who now is sales manager and  
[17] occupies the chief marketing responsibility.

[18] Tony Ontiveros is the General Manager of  
[19] Operations. He also reported directly to me.

[20] John Tenety, who was the head of  
[21] construction in the building of facilities. John,  
[22] again, that aspect, he had other things he did, but

Page 33

[1] for that purpose he reported to me.

[2] The head of customer service, Ann  
[3] Rosenberg, reported to me.

[4] And I believe that would be the sum total  
[5] of the line managers that reported to me. I have  
[6] staff people like my assistant and others,  
[7] consultants, but no line people.

[8] Q: Behrooz Nourain, I take it, then, was not  
[9] on the list of people who reported directly to you?

[10] A: Behrooz reported directly--there were  
[11] times when Behrooz would report to me because there  
[12] would be a change back early on when Bruce McKennon  
[13] was there as Chief Operating Officer, and I believe  
[14] Behrooz worked for Bruce directly.

[15] When Bruce left, there was a period when  
[16] Behrooz worked for me before he reported more  
[17] directly to the technical people, the general  
[18] manager at our operations center or John Tenety,  
[19] who were more involved in the technical part of the  
[20] operation. But day to day, Behrooz did not report  
[21] to me, no.

[22] Q: You mentioned Bruce McKennon. Now, he

Page 34

[1] left the company in 1993; is that correct?

[2] A: That's right.

[3] Q: And his title was Chief Operating Officer?

[4] A: Executive Vice President and Chief  
[5] Operating Officer.

[6] Q: Was he a person that reported directly to  
[7] you?

[8] A: Yes.

[9] Q: Who was his successor?

[10] A: There was no successor to Bruce.

[11] Q: That position was just not filled?

[12] A: That's correct.

[13] Q: The kinds of things that Bruce McKennon  
[14] did, who performed those functions? If there was  
[15] more than one person who took responsibilities that  
[16] had been Bruce's, you could tell me that, too.

[17] A: Yes. The department heads that worked for  
[18] Bruce assumed those responsibilities. Bruce at  
[19] that time had customer service. Bruce at that time  
[20] had operations, engineering, and they were shuffled  
[21] around. So department heads consolidated those  
[22] responsibilities among themselves.

Page 35

[1] Q: When Mr. McKennon was there at the  
[2] company, I gather, then, he was almost another  
[3] layer of responsibility between you and the  
[4] department head; is that correct?

[5] A: That's correct.

[6] Q: And basically you took that layer out when  
[7] he left?

[8] A: That's correct.

[9] Q: Now the company had, of course, employed  
[10] legal counsel to file its--strike that. Let me  
[11] back up a second.

[12] There is a name you didn't mention:  
[13] Andrew Berkman.

[14] A: That's correct.

[15] Q: He's the General Counsel.

[16] Did Mr. Berkman perform the legal counsel  
[17] functions during the entire period that you have  
[18] been speaking of, that is, 1993 forward?

[19] A: 1993 forward?

[20] Q: Yes.

[21] A: Yes, sir, I believe he did.

[22] Q: Was he someone that reported to you, or

Page 36

(1) did you consider him as sort of like part of your  
(2) staff, in a sense?

(3) A: He didn't. He would report directly to me  
(4) on certain matters. He would report to Howard  
(5) Milstein on other matters because his  
(6) responsibilities covered more than Liberty Cable.

(7) Q: I understand. What kind of legal work did  
(8) Mr. Berkman do for Liberty Cable, to your  
(9) knowledge?

(10) A: His primary duties involved drafting  
(11) contracts for the buildings we were negotiating  
(12) with, negotiating those contracts with counsel for  
(13) the building with whom we were negotiating,  
(14) handling matters of return of equipment if there  
(15) was a dispute about someone, whether they had to  
(16) return their equipment or not. A billing dispute.

(17) And also at a time he became our chief  
(18) compliance officer for licensing matters.

(19) Q: That latter responsibility that you said  
(20) he undertook commenced approximately the second  
(21) half of 1995; is that correct?

(22) A: I believe it was mid 1995, I might say.

Page 37

(1) Q: Now, who was responsible for filing the  
(2) FCC license applications?

(3) MR. SPITZER: Do you want to give a time  
(4) frame on this? Are you talking about throughout  
(5) the period?

(6) MR. BECKNER: The same period I'm talking  
(7) about. And again, if the responsibility changed  
(8) over the period, I would like to know that.

(9) MR. SPITZER: '93 to '95?

(10) MR. BECKNER: Yes.

(11) THE WITNESS: Pepper & Corazzini. But  
(12) that would be the actual filing of the document.

(13) BY MR. BECKNER:

(14) Q: I understand. Who was the person at  
(15) Liberty who retained that law firm for the purpose  
(16) of filing the microwave applications that you know?

(17) A: Well, the firm was retained before I  
(18) arrived at Liberty, so they were on retainer when I  
(19) arrived in early '91. I believe they were  
(20) responsible for the application to the FCC for  
(21) permission to use the 18 gigahertz frequency for  
(22) video transmission. They consequently were also

Page 38

(1) responsible for the individual path requests made  
(2) by Liberty, and that's when I became involved with  
(3) them.

(4) Q: Aside from yourself, who were the other  
(5) people at Liberty who worked with Pepper &  
(6) Corazzini on the individual applications during the  
(7) time period that we are talking about?

(8) A: Bob Schwartz may have been involved for a  
(9) period in that spring when I first joined the  
(10) company.

(11) Bruce McKennon was definitely involved in  
(12) that process.

(13) Behrooz Nourain was involved in that  
(14) process.

(15) I believe, to a degree, Tony Ontiveros,  
(16) the General Manager of Operations, was involved in  
(17) that process, because it was a process which  
(18) involved not just a physical filing in Washington,  
(19) but an engineering survey and the site survey and a  
(20) lot of background work that had to take place  
(21) before you could submit an application.

Page 39

(1) Stern, who, at a point, was advising us on the  
(2) process. Whether he was actually involved in  
(3) filings, I don't recall, but was involved in  
(4) advising us on the process.

(5) There may have been others, but that's  
(6) just to name a few.

(7) Q: Those are the names that come to mind  
(8) right now?

(9) A: That's correct.

(10) Q: Can you tell me what years Mr. Stern was  
(11) involved in advising Liberty on the process.

(12) A: As I recall, it would have been '91 and  
(13) '92.

(14) Q: Do you know whether or not Mr. Stern had  
(15) any further role on behalf of Liberty in '94 and  
(16) '95?

(17) A: He continued to be a consultant. I do not  
(18) believe he was directly involved in FCC licensing  
(19) issues during that period afterward when he  
(20) remained a consultant.

(21) Q: What kinds of things did he do as a  
(22) consultant in 1994, '95, if you know?

Page 40

(1) A: He was available to us. There were  
(2) questions that would arise, and on occasion when I  
(3) would call him there would be an FCC notice about  
(4) private cable operators having the opportunity to  
(5) participate in rule making regarding certain  
(6) frequencies. I would ask Mr. Stern, from his  
(7) knowledge, did a company like Liberty have to  
(8) participate and should we? It would be strategic  
(9) rather than day-to-day questions that I would ask  
(10) him about.

(11) Q: And Liberty is represented in this matter  
(12) by, among other things, Lloyd Constantine's firm  
(13) and the two gentlemen who are seated to your left.

(14) Was that a relationship that was  
(15) established between Liberty and Mr. Constantine's  
(16) firm while you were president, or had that already  
(17) existed when you came to work?

(18) A: No. It occurred when I was president.

(19) Q: Were you involved in establishing that  
(20) relationship?

(21) A: No, I was not.

(22) Q: Who established the relationship?

Page 41

(1) A: Howard Milstein.

(2) Q: Do you know what year that was?

(3) A: I recall it would have been '93, but I  
(4) can't be precise on the date.

(5) Q: Did you have occasion to work with lawyers  
(6) of the Constantine firm prior to, let's say, the  
(7) fall of 1995?

(8) A: Yes.

(9) Q: Can you describe in a very general way  
(10) what kinds of matters you worked on with them.

(11) MR. SPITZER: We are trying to give you  
(12) full latitude to pursue your inquiry as you wish,  
(13) but I'm a little concerned about the relevance of  
(14) this. Could you give us some sense of where you're  
(15) heading and why? Otherwise, I may be compelled to  
(16) interpose or assert a privilege here.

(17) MR. BECKNER: It's the same sort of  
(18) question I asked him with respect to Mr. Berkman,  
(19) and that's the same kind of answer I'm looking for.  
(20) He told me Mr. Berkman was involved in negotiating  
(21) contracts and so on.



Page 42

[1] description of the types of matters we worked on,  
[2] but nothing beyond that.

[3] MR. BECKNER: It's not my intent to  
[4] inquire into privileged matters. It's simply what  
[5] kinds of things.

[6] THE WITNESS: In general it was corporate  
[7] matters. They were involved in reviewing certain  
[8] financing transactions we were doing, certain  
[9] contracts we were doing, for example, with  
[10] programmers or suppliers. It was a wide range of  
[11] matters.

[12] BY MR. BECKNER:

[13] Q: Any FCC matters?

[14] A: I don't believe that Constantine firm was  
[15] involved in FCC matters until perhaps '95,  
[16] beginning of '95. I can't be precise on that, but  
[17] in general before, early on they were not involved  
[18] in and later became involved in FCC matters.

[19] Q: Now I'm going to ask you essentially the  
[20] same series of questions with regard to the  
[21] Washington firm of Ginsberg Feldman and Bress and,  
[22] in particular, Henry Rivera, who has an appearance

Page 43

[1] on behalf of Liberty in this proceeding.

[2] First, I want to know if you were  
[3] responsible for initiating the relationship between  
[4] Liberty and Mr. Rivera's firm.

[5] A: Yes, I was.

[6] Q: And about when did that happen?

[7] A: As I recall, that was '93, perhaps '92.  
[8] Maybe the end of '92.

[9] Q: And again, as I asked you with respect to  
[10] the other lawyers, can you tell me in a general way  
[11] the kinds of legal services that you were looking  
[12] for from Mr. Rivera's firm.

[13] A: It's specifically related to various rule  
[14] makings which were taking place at the FCC, such as  
[15] video dial tone, such as home wiring proceeding,  
[16] and competitive issues such as the report to  
[17] Congress of the FCC and the state of competition in  
[18] the cable industry.

[19] Q: And finally the firm of Wiley Rein &  
[20] Fielding and Robert Petit in particular.

[21] When did the relationship between that  
[22] firm and Liberty become established?

Page 44

[1] A: As I recall, it was in 1995.

[2] Q: Do you remember what part of 1995?

[3] A: I believe it was mid 1995. I can't be  
[4] precise, but I believe it was mid 1995.

[5] Q: And was that relationship something that  
[6] you initiated?

[7] A: Yes. I was involved in the initial  
[8] discussion. Whether-I believe I made the first  
[9] call. I didn't finalize the relationship, but I  
[10] was involved in establishing the relationship.

[11] MR. BECKNER: This is a good time to take  
[12] a break.

[13] (Brief recess from 10:35 a.m. to 11:05  
[14] a.m.)

[15] MR. BECKNER: Back on the record.

[16] BY MR. BECKNER:

[17] Q: Mr. Price, before I ask you anymore  
[18] questions, there has been a break of some 20  
[19] minutes or so, and I want to give you the  
[20] opportunity now, if you would like to use it, to  
[21] supplement or amend any answer to a previous  
[22] question which, upon reflection, you feel like

Page 45

[1] maybe is not complete or otherwise needs fixing.

[2] A: No, thank you. I'm fine.

[3] Q: In your capacity as president of Liberty  
[4] Cable, in addition to your managerial  
[5] responsibilities which you described in some  
[6] detail, did you also have any direct involvement in  
[7] marketing or selling the idea of Liberty's service  
[8] to owners of buildings?

[9] A: I did.

[10] Q: Could you just describe that for me

[11] generally what you did and how you did it.

[12] A: We procured clients in two ways. One was  
[13] to advertise most often on the front page of the  
[14] Times every morning, offering to liberate people  
[15] from the cold grasp of the cable monopoly, and we  
[16] would get calls for those advertisements.

[17] The other way was to send letters out to  
[18] respective owners or managing agents, telling them  
[19] about our service and asking them to make a  
[20] presentation.

[21] And the third way was to dispatch our  
[22] account execs to harvest any leads that we received

Page 46

[1] either in the mail or over the telephone.

[2] Q: Now, the letters that you described to  
[3] respective customers, were those letters that went  
[4] out under your signature or someone else's?

[5] A: They would go out under my signature,  
[6] under our marketing director's signature, or under  
[7] account executives' signatures.

[8] Q: Were there occasions when you, yourself,  
[9] would become personally involved in marketing  
[10] Liberty's service to a specific customer?

[11] A: Yes.

[12] Q: Tell me the circumstances under which you  
[13] would get personally involved.

[14] A: When I was asked to make a presentation.

[15] Q: Who would make that request of you?

[16] A: Generally a managing agent for a building  
[17] or an owner, most typically a managing agent  
[18] representing the board of a co-op or a condo.

[19] Q: And so you would make a presentation to  
[20] the board of the co-op?

[21] A: To the board, to the managing agent, to  
[22] the firm that the managing agent belonged to, to

Page 47

[1] brief the other executives there, to the committee  
[2] or the board constituted for that purpose, to a  
[3] consultant to a building who was asked to delve  
[4] into Liberty and check its credentials, somewhat of  
[5] the above.

[6] Q: Did you have a more or less standard sales  
[7] talk that you would give to these people?

[8] A: No, it wasn't standard, because we learned  
[9] that every building was different, every wiring  
[10] scheme had to accommodate the needs of the  
[11] building. In some cases, the old wiring was  
[12] hanging off the back of the building, and in other  
[13] cases it was encapsulated in conduits we couldn't  
[14] reach in some cases. In other cases it was in  
[15] stairwells, running down the hallway.

[16] Every roof was different. It was really a  
[17] tailored presentation of the particular new or old  
[18] or big or small building. That's why it was  
[19] difficult to have a cookie-cutter procedure that  
[20] applied to all because there was no easy universal  
[21] solution to do what we did.

[22] Q: Well, correct me if I'm wrong, but when

Page 48

(1) you were asked to make a presentation as you  
(2) described, was that at a fairly early stage in the  
(3) discussions between Liberty Cable and this  
(4) particular customer?  
(5) A: Sometimes it was at the beginning and  
(6) sometimes at the very end because it would go  
(7) through a long process of surveys and questions and  
(8) answers and then would run to a bottleneck because  
(9) someone from Time-Warner might live in the building  
(10) and try to obstruct the installation which would  
(11) open up the whole subject again and require me to  
(12) go in and repair the damage that they did.  
(13) Q: Were there some general arguments that you  
(14) made as to why people should be interested in  
(15) buying Liberty's service?  
(16) A: Yes. The general arguments were-it  
(17) wasn't really an argument. No one needed much  
(18) convincing that they had lousy cable service. They  
(19) wanted to find out whether there were reliable  
(20) alternatives.  
(21) So I didn't have to do any negative  
(22) responding. What we offered people was an

Page 49

(1) alternative. I convinced them that their cable  
(2) service wasn't broken.  
(3) Q: Did you also suggest to people that  
(4) Liberty offered a less expensive alternative than  
(5) Time Warner?  
(6) A: Yes. That was one of the selling points.  
(7) Q: Were there any other general selling  
(8) points that you would commonly make to a board or  
(9) managing agent?  
(10) A: Well, the general selling points were the  
(11) programming was comparable to what they received,  
(12) that the price was lower, that the reliability was  
(13) higher, it wouldn't go out as much, that the  
(14) customer service was better, that we would answer  
(15) our telephone. We would have called rather than  
(16) not answer our telephone. And that we would always  
(17) remain up on the state of the art in terms of  
(18) upgrades to new technologies. Those were the  
(19) general selling points.  
(20) Q: In any of your discussions with managing  
(21) agents or representatives of the building-I'm  
(22) going to use the term broadly-

Page 50

(1) MR. SPITZER: Use the term what?  
(2) MR. BECKNER: Broadly, so I don't have to  
(3) give a list of all the possible permutations.  
(4) BY MR. BECKNER:  
(5) Q: Did the subject come up of how quickly  
(6) Liberty could initiate service after an agreement  
(7) was concluded between Liberty and the building?  
(8) A: It would come up generally after an  
(9) agreement was concluded or at the very end. That  
(10) really wasn't a threshold consideration because  
(11) they had labored under the old supplier for  
(12) decades. So there generally was not a matter of  
(13) urgency after 30 or 40 years of what they had.  
(14) Q: Well, in those times when it did come up,  
(15) perhaps at the end off the process or after an  
(16) agreement had been signed, what was the general  
(17) nature of the question that was asked of Liberty by  
(18) the building's representative?  
(19) A: The general question was how long does it  
(20) generally take you to provide service to the  
(21) building after we signed the contract

Page 51

(1) A: The answer was, from our experience, three  
(2) or four months from end to end, allowing for the  
(3) application, the engineering application process,  
(4) the response from the FCC, and then the actual  
(5) installation of the building.  
(6) Q: Now, with respect to a building that was  
(7) going to be served by a hard wire interconnection  
(8) from a neighboring building as opposed to a  
(9) microwave antenna, was the response any different  
(10) than what you gave that building?  
(11) A: No, it was not.  
(12) Q: Do you recall a customer ever telling you  
(13) that the three- to four-month time estimate that  
(14) you gave was too long, that they needed it sooner?  
(15) A: Sometimes very rarely people would ask,  
(16) maybe one or two, but in the area of inquiry. It  
(17) wasn't a demand.  
(18) Q: Do you know if Liberty ever lost a  
(19) customer or lost a sale because it was unable to  
(20) install its service on the timetable that the  
(21) customer demanded?  
(22) MR. SPITZER: You are referring here to

Page 52

(1) the customer as a building, not an individual  
(2) subscriber?  
(3) MR. BECKNER: Right.  
(4) THE WITNESS: No, I don't believe we ever  
(5) did it.  
(6) BY MR. BECKNER:  
(7) Q: I'm going to show you what has been marked  
(8) as Exhibit 5 in Ms. Ceccarelli's deposition.  
(9) (Document handed to the witness, and  
(10) witness reviews document.)  
(11) A: Am I allowed to read this?  
(12) Q: Yes. I was about to say take whatever  
(13) time you need to look at it, and then let me know  
(14) when I could ask you a few questions about it.  
(15) (Witness reviews document.)  
(16) A: All right. Shoot.  
(17) Q: First question I want to ask you is, do  
(18) you recall having seen this document or a copy of  
(19) it before today?  
(20) A: No. I may have, but I don't recall seeing  
(21) it.  
(22) Q: Do you have any recollection of

Page 53

(1) engineering surveys having been completed at any of  
(2) the buildings identified in the letter?  
(3) A: I couldn't speak to that. I have no  
(4) knowledge of it.  
(5) Q: Do you know who Thomas Eschmann is?  
(6) A: Not a clue.  
(7) Q: Do you know whether in 1993 it would have  
(8) been the practice for Liberty to have conducted  
(9) engineering surveys of various buildings in New  
(10) York?  
(11) A: Yes, it would have been.  
(12) Q: And under what circumstances would that  
(13) have been done?  
(14) A: When a building or managing agent  
(15) requested us to come in and see if their building  
(16) could be served by Liberty Cable.  
(17) Q: And in the event that such a request was  
(18) made, I take it that Liberty would, in fact,  
(19) perform this survey?  
(20) A: Yes.  
(21) Q: In a general way, what did that survey

Page 54

(1) A: I have never been involved in engineering  
(2) surveys. I presumed it would mean could we site an  
(3) antenna on a roof and could that antenna see one of  
(4) our transmitters.

(5) And if it could, was the building  
(6) construction sufficient to provide us access to the  
(7) subscribers who wanted service, and were there any  
(8) special requirements the buildings had in terms of  
(9) esthetics, that range of issues.

(10) Q: I'm going to show you a copy of what has  
(11) been marked as Exhibit 2 to Mr. Ontiveros'  
(12) deposition. And again I would like you to just  
(13) take whatever time you need to look at it, and I  
(14) will ask you a few questions about it.

(15) (Document handed to the witness, and  
(16) witness reviews document.)

(17) MR. SPITZER: This is the one-page  
(18) exhibit?

(19) MR. BECKNER: Yes.

(20) THE WITNESS: Yes.

(21) BY MR. BECKNER:

(22) Q: Again, the first question I have for you

Page 55

(1) is, do you recall having seen this document or a  
(2) copy of it before today?

(3) A: I'm copied on it, so I presume it crossed  
(4) my desk. Do I specifically remember this document?  
(5) No.

(6) Q: Now, I noticed on the site survey here,  
(7) Part A indicates that there is a line of sight to a  
(8) number of buildings, and Part B indicates that a  
(9) particular address, 101 West 50th Street, can be  
(10) served by a cable? Do you know whether or not it  
(11) was a standard practice of Liberty in 1993 to  
(12) determine for proposed service locations whether or  
(13) not those locations could be served by cable as  
(14) well as by microwave?

(15) A: Yes. That was the procedure, or the  
(16) practice or the procedure.

(17) Q: Were you involved in any decision where  
(18) the company had a choice between using microwave  
(19) and a cable to serve a particular new building?  
(20) That is, a new customer?

(21) A: I was involved on occasion, but not all  
(22) occasions.

Page 56

(1) Q: With respect to those occasions when you  
(2) were involved, what were the factors that were  
(3) considered in determining whether or not to serve a  
(4) particular building by microwave or by cable from  
(5) another building on the block?

(6) A: Oh, there were numerous factors.  
(7) Sometimes it was an esthetic question. If the  
(8) building said there is already a dish on the  
(9) building next door, why do we need a dish? There  
(10) are enough antennas on the roof anyway. Why do we  
(11) need another one?

(12) Sometimes it was because there was no line  
(13) of sight. That would be a more rare case, in my  
(14) experience. There have only been one or two where  
(15) there wasn't a line of sight.

(16) In other cases, just a variety of factors.  
(17) No single factor.

(18) Q: Would costs have been a factor?

(19) A: Cost was one factor. By no means the  
(20) essential factor, but one of the factors.

(21) Q: Would the fact that you didn't have to  
(22) have an FCC license to run a cable to a building

Page 57

(1) have been a factor?

(2) A: If it was a factor, it was a minor factor.  
(3) More of in the convenience category than anything  
(4) else.

(5) We assumed, for the most part, we would be  
(6) applying for an FCC license in every case, so it  
(7) was more the exception than the rule, if there was  
(8) not an application to be made.

(9) Q: Are you at all familiar with the entity  
(10) described here as Manhattan Skyline Management  
(11) Corporation?

(12) A: No, I'm not.

(13) Q: Since you have the book of exhibits to  
(14) Mr. Ontiveros' deposition in front of you, I would  
(15) like to ask you to turn to Exhibit 9 of his  
(16) deposition which is further in the back of the  
(17) book. It's a one-page memorandum.  
(18) (Witness reviews document.)

(19) A: Yes. What can I tell you?

(20) Q: Do you recall having seen a copy of this  
(21) document before today?

(22) A: Well, I'm copied on it, but I don't

Page 58

(1) remember specifically this piece of paper, but I'm  
(2) sure I received a copy.

(3) Q: Was this particular format that is a  
(4) memorandum to Tony Ontiveros and Behrooz Nourain  
(5) from Andy Berkman with the cc's indicated at the  
(6) bottom, was that commonly used by Mr. Berkman in  
(7) 1994 to advise Mr. Ontiveros and Mr. Nourain that  
(8) the company had a new contract?

(9) A: I recognized the form. Whether it was  
(10) commonly used in exactly this form, I don't know,  
(11) but the general form is familiar.

(12) Q: You recall seeing other memorandum very  
(13) similar to this in appearance for other addresses?

(14) MR. SPITZER: You mean similar in  
(15) structure and addressees and cc's?

(16) MR. BECKNER: Correct.

(17) THE WITNESS: Exactly. Not necessarily  
(18) the content, but in general the message conveyed to  
(19) the people copied, yes.

(20) BY MR. BECKNER:

(21) Q: Was this, to your knowledge, a standard  
(22) procedure that the company used to advise

Page 59

(1) Mr. Ontiveros and Mr. Nourain to start the  
(2) engineering work for providing service to a  
(3) particular building?

(4) A: Well, it was more a practice than  
(5) procedure. There is no manual that said you will  
(6) do it this way or write it out that way and you  
(7) will copy these people. That's more of a  
(8) procedure-practice. I believe Andy Berkman felt  
(9) this was the appropriate way to transmit this  
(10) information.

(11) Q: And so are you saying this is a practice  
(12) that he initiated?

(13) A: Yes.

(14) Q: "He" meaning Mr. Berkman?

(15) A: That's correct.

(16) Q: Do you know whether or not Mr. Ontiveros  
(17) and Mr. Nourain were instructed to await a  
(18) memorandum like Ontiveros Exhibit 9 before  
(19) beginning the actual specific preparation and  
(20) engineering work for a particular building?

(21) A: I don't know the arrangement that Andy had  
(22) between the two of them.

Page 60

[1] Q: But I take it as far as you were  
[2] concerned, they did not have to wait to receive a  
[3] memorandum like Exhibit 9 before beginning work?

[4] A: I didn't say that. I don't know the  
[5] arrangement Andy had between them or what their  
[6] normal procedure was. Whether the marketing  
[7] director could ask them to perform an engineering  
[8] study or how that would work, I don't know.

[9] Q: But my question was directed toward what  
[10] your own expectation was with respect to  
[11] Mr. Ontiveros and Mr. Nourain and what they did and  
[12] when they did it. That's what I intended by my  
[13] question.

[14] A: I don't know what you're asking because  
[15] this is an informational memo. I don't think this  
[16] is an instruction to do anything, if this states  
[17] that this building has a contract and what the rate  
[18] is. So I don't see any instructions here.

[19] Q: I understand you don't see any  
[20] instructions.

[21] MR. SPITZER: Why don't you restate the  
[22] question.

Page 61

[1] MR. BECKNER: I will restate the question  
[2] a different way.

BY MR. BECKNER:

[4] Q: As far as Peter Price is concerned, was it  
[5] necessary, as far as you were concerned, for  
[6] Mr. Ontiveros and Mr. Nourain to receive a memo  
[7] like this from Mr. Berkman before they began the  
[8] specific work on a particular project?

[9] A: No, because work on a project might occur  
[10] six months before a contract was signed in the  
[11] Marketing Department asking Bertina Ceccarelli  
[12] asking an engineer to go do a sight survey. So the  
[13] work was an unfolding process.

[14] Q: Now, with respect to a new building that  
[15] was a new Liberty customer that was going to be  
[16] served by microwave, to your knowledge was there  
[17] any particular instruction or event or memorandum  
[18] that Mr. Ontiveros and Mr. Nourain had to receive  
[19] before they would order the frequency coordination  
[20] and the application to be prepared?

[21] A: No. That would vary at the beginning.  
[22] They were conducting frequency coordinations or

Page 62

[1] starting them with prospective customers before we  
[2] even had a negotiated contract. Later it was more  
[3] formalized in that they would only begin to do that  
[4] on instruction of the marketing director as we  
[5] acquired a marketing director and gained some  
[6] experience and developed some internal knowledge of  
[7] how these things would unfold. And then later this  
[8] format became a more formal way to advise the  
[9] engineering and installation people that a final  
[10] contract had been received and what the terms were.

[11] So as we learned how to deal with the  
[12] various situations, we formalized ways of handling  
[13] them and formalized the communication.

[14] Q: When you used the term "this format" in  
[15] the answer you just gave me, were you referring to  
[16] the format of the memorandum that's Exhibit 9?

[17] A: That's correct.

[18] So this might not have existed in 1992,  
[19] but did exist in 1994 and would not necessarily be  
[20] the form we would use in 1996.

[21] Q: In the years in which this format that is

Page 63

[1] that in the years in which this format existed,  
[2] this type of document was, in fact, the triggering  
[3] event for Mr. Ontiveros and Mr. Nourain to start  
[4] the process of preparing the FCC application?

[5] MR. SPITZER: You mean the only triggering  
[6] device or a triggering device?

[7] MR. BECKNER: A triggering device.

[8] THE WITNESS: I think a triggering device  
[9] is appropriate because they might well have  
[10] initiated the path coordination in anticipation of  
[11] the final contract being signed. So they might  
[12] well have started some form of work, as I said  
[13] before, in the application process prior to the  
[14] contract, although this would be a triggering  
[15] event.

BY MR. BECKNER:

[17] Q: In any event, had they not started work  
[18] before receiving this document, then this document  
[19] would advise them that they need to do that?

[20] A: That's correct.

[21] Q: I would like you to take a look at  
[22] Exhibit 7 to Mr. Ontiveros' deposition.

Page 64

[1] A: What page number is that?

[2] Q: Mr. Price, if you would just take a look  
[3] at--flip through Exhibit 7. It's kind of long and  
[4] I'm not going to quiz you about it. I'm not going  
[5] to quiz you about every page. I'm just going to  
[6] ask you about the document generally.

[7] (Counsel confers with the witness.)

[8] A: I'm just going to flip through quickly in  
[9] the interest of time, yes.

[10] Q: Do you recall having seen a document of  
[11] this particular format, if not necessarily this  
[12] exact document before?

[13] A: Yes.

[14] Q: Do you recognize this as something that  
[15] was regularly prepared for Liberty or by Liberty's  
[16] people?

[17] A: That's correct.

[18] Q: I noticed that in the top left corner  
[19] there are dates. For example, on the first page of  
[20] the exhibit there is the date April 4, 1996, and  
[21] there are other dates back in the document.

[22] A: Yes, I see them.

Page 65

[1] Q: Were these prepared weekly, to your  
[2] knowledge?

[3] A: As I recall, they were prepared weekly.

[4] Q: And did you receive a copy of them every  
[5] week?

[6] A: Yes, I did.

[7] Q: Now, was there a meeting, a regular weekly  
[8] meeting, that you had with your staff?

[9] A: Yes.

[10] Q: And this would have been held during the  
[11] time period we have been talking about, '93, '94,  
[12] '95?

[13] A: That's correct.

[14] Q: And was this operations report for that  
[15] week, was that a subject of discussion at the staff  
[16] meeting?

[17] A: Yes, it was.

[18] Q: In addition to the staff--that is, the  
[19] people who reported to you--were there other people  
[20] of senior management who attended these staff  
[21] meetings regularly?

Page 66

[1] Q: Which of the Milstein brothers attended?  
[2] Or did both?  
[3] A: Both.  
[4] Q: Approximately how long did each of these  
[5] staff meetings run?  
[6] A: Generally an hour, sometimes up to two  
[7] hours, but generally an hour.  
[8] Q: Now, can you tell me the use that was made  
[9] of these technical operations reports at the staff  
[10] meeting.  
[11] A: The use was to coordinate the marketing  
[12] with the installation procedure and to coordinate  
[13] any licensing that was required in order to move  
[14] from contract to installation. As well as, during  
[15] installation, questions that would arise concerning  
[16] marketing and installation as to what was expected  
[17] or what a particular customer was promised and what  
[18] they received. Did they order one box? Two boxes?  
[19] Was the installation prepared according to spec?  
[20] That sort of thing.  
[21] Q: Now, when the company used the term  
[22] "installation" in this progress report, do you know

Page 67

[1] whether or not that term referred to the connection  
[2] of a particular individual outlet as distinguished  
[3] from the wiring of the building itself and the  
[4] construction of the microwave antenna on the roof,  
[5] if that's what's going to be used?  
[6] A: It referred to both. The term  
[7] "Installation Progress Report," I think the word  
[8] "progress" describes it best. There were a series  
[9] of steps required during an installation, starting  
[10] from the engineering of the building to the  
[11] construction of the facility on the roof to the  
[12] authority to transmit through to the building to  
[13] the internal wiring which had to be accomplished to  
[14] the activation of the subscriber and the  
[15] provisioning of their equipment.  
[16] Q: I would like you to take a look at page 53  
[17] of the exhibit, 0053 in large numerals. It's page  
[18] 12 of 12 of the April 6, 1995, Installation  
[19] Progress Report.  
[20] A: Got it.  
[21] Q: Can you tell me what the "T" Block  
[22] buildings list is.

Page 68

[1] A: Yes. The "T" Block was referred to in  
[2] install blocks, so we made a general record of the  
[3] buildings where we were operating so we could  
[4] identify the new building was also in the same  
[5] block where we already had a receive site; i.e. an  
[6] installed location.  
[7] Q: Now, in this particular list here, is it  
[8] correct that the buildings or facilities--"yacht  
[9] club," if you want to call it a building--on the  
[10] right column, are those buildings that are fed by  
[11] cable from the corresponding location in the left  
[12] column?  
[13] A: I believe they are. It looks like the  
[14] list of those that are fed by--whether that's the  
[15] comprehensive list at this moment, I don't know,  
[16] but as of this date it purports to be a list of  
[17] what was served at that time in that fashion.  
[18] Q: And then underneath that, the content has  
[19] been redacted, but there is the heading private  
[20] building complexes which are interconnected. I  
[21] take it that referred to something different?  
[22] A: Yes. I presume it does.

Page 69

[1] Q: Does that refer to a circumstance where  
[2] there are--an apartment complex consisting of  
[3] several buildings on the same commonly owned piece  
[4] of property?  
[5] A: That would be typical. They might share a  
[6] common address, or the identity of a Normandie  
[7] Court might be several towers, several different  
[8] buildings, but operate under the umbrella of one  
[9] name.  
[10] Q: Now, is there anything here in this report  
[11] that advises you or anyone else reading it as to  
[12] what the status of the license application to the  
[13] FCC is with respect to any of these buildings?  
[14] MR. SPITZER: Are you talking about the  
[15] particular report that we have been focusing on  
[16] now, the April 6, 1995, report?  
[17] MR. BECKNER: Any of the reports that were  
[18] collected together in Ontiveros Exhibit 7.  
[19] THE WITNESS: In the beginning there is no  
[20] specific reference, and the later ones have a  
[21] reference to a license status.  
[22] BY MR. BECKNER:

Page 70

[1] Q: Well now, when you speak of later ones,  
[2] you mean ones that have been prepared after the  
[3] most recent of these?  
[4] A: Yes. Well, I haven't read in detail this  
[5] long exhibit, but I noticed that at a point the  
[6] status on the far right, which is the status of the  
[7] installation, there is an additional column  
[8] "license" which appears after status.  
[9] Q: That, for example, is on page 18?  
[10] A: Correct.  
[11] Q: And that's the April 4, 1996, report; is  
[12] that right?  
[13] A: Correct.  
[14] Q: So that's something that was added to this  
[15] report?  
[16] A: That's correct.  
[17] Q: Now looking at page two of the October  
[18] 5th, 1995, report, which has page number 0031 on  
[19] the bottom?  
[20] A: Yes.  
[21] Q: I take it that that page does not include  
[22] a column that identifies the status of the license

Page 71

[1] application?  
[2] A: No, it does not.  
[3] Q: So would it be fair to assume that the  
[4] column was added sometime after October 5th, 1995?  
[5] A: I presume so.  
[6] Q: And before April 4th, 1996?  
[7] A: I can't say looking at it. That's a  
[8] conclusion you could reach, but I haven't sorted  
[9] through every page and prepared them.  
[10] Q: Well, do you recall at some point--  
[11] MR. SPITZER: I will note for the record  
[12] that page one of the October 5, 1995, Installation  
[13] Progress Report does have a column for license, if  
[14] you look at page 30.  
[15] MR. BECKNER: So it does.  
[16] (Counsel confers with the witness.)  
[17] THE WITNESS: The clarification might be  
[18] that the page you referred to, page 31, the  
[19] right-hand column would indicate the status is  
[20] complete, so there are prior installations which  
[21] took place that were completed in the end in the  
[22] spring of '95, where on page 30 the reference is to

Page 72

[1] current projects as of October 5, '95. So I  
[2] believe one is history and the other is current.  
[3] **BY MR. BECKNER:**  
[4] **Q:** That's fair enough. Let's just take a  
[5] look at the April 6th, 1995, report which begins at  
[6] page number 0041.

[7] Is there anything in that report that you  
[8] see that identifies the status of the FCC license  
[9] application?

[10] **A:** What was the question?  
[11] (Whereupon, the Court Reporter read back  
[12] the previous question.)

[13] **MR. SPITZER:** Are you talking about page  
[14] one of this report, or the entirety?

[15] **MR. BECKNER:** The April 6, 1995, report.  
[16] I did not mean to trick the witness with respect to  
[17] the other question. I want to be fair.

[18] **THE WITNESS:** It's 12 pages. Do you want  
[19] me to go through the 12 pages?

[20] **BY MR. BECKNER:**

[21] **Q:** If you don't mind.

[22] **A:** No, I don't see anything that refers to

Page 73

[1] the license status.

[2] **Q:** Do you recall at some point directing  
[3] Mr. Ontiveros or anybody else in the Operations  
[4] Department to modify this format of this report to  
[5] include information about the license status?

[6] **A:** As I recall, at one of the weekly meetings  
[7] we suggested that be added so we could better  
[8] coordinate the installation dates with FCC  
[9] authorization dates.

[10] **Q:** Before that information was added to the  
[11] report, in the weekly meetings did the subject of  
[12] an FCC license application's status come up?

[13] **A:** Very rarely, if at all.

[14] **Q:** Now, I think you testified in response to  
[15] an earlier question that at some point in 1995, I  
[16] think about the middle of '95, there were some  
[17] procedures put in by Mr. Berkman to verify FCC  
[18] license status.

[19] **A:** That's correct.

[20] **Q:** Prior to the initiation of those  
[21] procedures, who was involved at Liberty in the FCC  
[22] license process?

Page 74

[1] **A:** I believe I mentioned before that there  
[2] was a series of people involved in different steps  
[3] of the process. Certainly Behrooz Nourain-I think  
[4] I mentioned this before-sometimes Tony Ontiveros  
[5] as well, Bruce McKennon at different points in  
[6] time, Joe Stern, Bob Schwartz early on in the  
[7] process, myself, the law firm of Pepper &  
[8] Corazzini-a variety of people-John Tenety.

[9] **Q:** Was there any one person who was relied  
[10] upon by the company to make sure that before a  
[11] microwave path was operated that the license to  
[12] operate that path was in hand?

[13] **A:** We relied upon counsel to do that: Pepper  
[14] & Corazzini.

[15] **Q:** Can you tell me how would counsel in  
[16] Washington know that you were going to switch on a  
[17] microwave path in New York City?

[18] **A:** Because they would be asked to file an  
[19] application for that path.

[20] **Q:** Well, would there have to be some  
[21] communication back and forth between somebody in  
[22] New York and Washington for Liberty and some other place in

Page 75

[1] Washington at Pepper & Corazzini, to determine the  
[2] status of that application?

[3] **A:** Yes, to activate the application.

[4] **Q:** Now, it was not necessary to have a  
[5] license to construct a facility, correct?

[6] **A:** When you say "construct," you mean-

[7] **Q:** Put the dish up on the roof.

[8] **A:** No. That's a construction permit, not a  
[9] license.

[10] **Q:** When I use "license," I mean an FCC  
[11] license.

[12] **A:** Right.

[13] **Q:** So what I'm trying to focus on is at some  
[14] point in time, the necessary construction had taken  
[15] place to operate the microwave system. There was a  
[16] dish on the roof to receive the signal and whatever  
[17] needed to be done from the transmitting location to  
[18] transmit a signal to that building.

[19] The question I want to ask is: Who at  
[20] Liberty was responsible for literally flipping the  
[21] switch to turn on a particular microwave path to a  
[22] building?

Page 76

[1] **A:** The Operations Department.

[2] **Q:** Okay. And who was responsible for  
[3] knowing, at the moment that that switch turning on  
[4] the path was thrown, that there was an FCC license  
[5] to operate that path?

[6] **MR. SPITZER:** If you know.

[7] **BY MR. BECKNER:**

[8] **Q:** If you know.

[9] **MR. SPITZER:** If there was such a person.

[10] **THE WITNESS:** It was the department. I  
[11] don't know-internally, I don't know whether it was  
[12] Tony Ontiveros or Behrooz Nourain or the secretary  
[13] who heard from Washington counsel, so I can't tell  
[14] you within the Operations Department. But it  
[15] resided within the Operations Department.

[16] **BY MR. BECKNER:**

[17] **Q:** That's fine. So the department-

[18] **A:** Their office is not where my office is, so  
[19] I was not involved in the day-to-day operations  
[20] there of who told whom to do whatever on a  
[21] particular date.

[22] **Q:** I understand. They're up on 95th Street?

Page 77

[1] **A:** That's correct.

[2] **Q:** So it was their responsibility to know,  
[3] prior to activating a microwave path, that Liberty  
[4] had received a license for that path; is that what  
[5] you're saying?

[6] **A:** Yes. It was our responsibility, as a  
[7] company, to be in accord with all laws and  
[8] regulations. So I'm not shirking responsibility  
[9] overall for the acts of the company, but in terms  
[10] of a particular property or a particular date, that  
[11] was authorized by the Operations Department. I was  
[12] not involved in that decision.

[13] **Q:** Well, in the second half of 1995 under the  
[14] new procedure, it's Mr. Berkman's responsibility;  
[15] correct?

[16] **A:** It is crystal.

[17] **MR. HOLT:** It's what?

[18] **THE WITNESS:** Crystal clear.

[19] **BY MR. BECKNER:**

[20] **Q:** Do you know whether or not the Operations  
[21] Department maintained any kind of log or other kind  
[22] of record of microwave communications back and forth

Page 78

[1] between themselves and the lawyers at Pepper &  
[2] Corazzini?  
[3] A: No, I do not.  
[4] Q: Do you know whether or not any of the  
[5] lawyers at Pepper & Corazzini maintained any such  
[6] log or record of telephone conversations that they  
[7] had with Liberty personnel?  
[8] A: I have no idea.  
[9] Q: I'm going to show you what has been marked  
[10] as Exhibit 1 to Ms. Ceccarelli's deposition. It's  
[11] a one-page document, and I would just like you to  
[12] take a look at it for a moment and let me know if I  
[13] could ask you some questions about it.  
[14] (Document handed to the witness, and  
[15] witness reviews document.)  
[16] A: I don't recall the document. I may have  
[17] seen it, but I don't recall it.  
[18] Q: Let me ask you about the handwriting to  
[19] the right of the typed name "Bertina Ceccarelli."  
[20] Do you recognize that?  
[21] A: I don't.  
[22] Q: I take it it's not yours?

Page 79

[1] A: It's definitely not mine.  
[2] Q: Do you recall any, quote, delays in  
[3] getting your system operational? Do you recall any  
[4] problems in that building?  
[5] A: No, I wasn't involved in the Brittany  
[6] installation. I wasn't involved with that  
[7] property, and I didn't negotiate the contract.  
[8] Q: Would it have been customary for  
[9] Ms. Ceccarelli to have written a memorandum  
[10] directly to Mr. Milstein, Mr. Edward Milstein, as  
[11] opposed to you or as opposed to getting you a copy  
[12] of that memorandum?  
[13] A: She might have written Milstein on  
[14] occasion. I don't know. There was a lot of  
[15] dialogue between and among the executives, and it  
[16] wasn't a hierarchical situation where people were  
[17] only allowed to talk to people in their direct  
[18] chain of command.  
[19] Q: So I take it you didn't have any standing  
[20] instruction to people who reported to you that they  
[21] should give you a copy of anything that they gave  
[22] either of the Milstein brothers?

Page 80

[1] A: No, there was no such instruction.  
[2] Q: I would like you to take a look at Berkman  
[3] Exhibit 1. It should be on the top of the  
[4] document.  
[5] (Witness reviews document.)  
[6] A: Yes, I'm copied on it. I presume I  
[7] received a copy.  
[8] Q: If you just take a glance at the second  
[9] page, it's a two-page document. That's all there  
[10] is to it.  
[11] MR. SPITZER: The excerpt of the contract?  
[12] MR. BECKNER: It's just the one page from  
[13] this document that's attached to it.  
[14] THE WITNESS: Right.  
[15] BY MR. BECKNER:  
[16] Q: Do you recall there being any problem  
[17] associated with 16 West 16th Street in terms of the  
[18] timeliness of the installation?  
[19] A: No, I don't recall it.  
[20] Q: Were you involved in any way with 16 West  
[21] 16th Street?  
[22] A: I don't recall being directly involved. I

Page 81

[1] know I never visited the building. I don't think I  
[2] have ever met Mr. Schmulowitz or Mr. Dinhoffner.  
[3] So while I normally sign the contracts, I  
[4] wasn't necessarily involved in a particular  
[5] location.  
[6] Q: On this memorandum, the first page of  
[7] Berkman Exhibit 1, there is the term "supertrunk"  
[8] which is used by Ms. Walden.  
[9] Was that a term that people at Liberty  
[10] used regularly in 1994, "supertrunk"?  
[11] A: Not regularly, but it could be used on  
[12] occasion.  
[13] Q: What did that refer to?  
[14] A: It referred to a hard-wire service of a  
[15] building rather than a microwave service of a  
[16] building. We would always look to see if there was  
[17] a hard-wire alternative when we were doing a  
[18] microwave installation.  
[19] Q: Now, did this refer to the typical use of  
[20] a coaxial cable that Liberty owned, or did it refer  
[21] to buying transport on, say, fiber optic that would  
[22] have been owned by NYNEX?

Page 82

[1] A: It would generally have referred to the  
[2] leasing transmission from a third party rather than  
[3] using our own coaxial.  
[4] Q: Was this leasing of carriage something  
[5] that Liberty actually did in 1994, or was it  
[6] something that was contemplated?  
[7] A: I believe we did lease some transport or  
[8] it might have been contemplated. It might have  
[9] been used, but I believe we were using leased  
[10] transfer.  
[11] Q: Did you continue using that in '95?  
[12] A: Yes.  
[13] Q: I would like you to take a quick look, if  
[14] you would, at Berkman Exhibit 3, which is pages  
[15] nine through 17 of the book there. I'm not going  
[16] to ask you in detail about any page beyond page 12,  
[17] so you don't have to study the rest of it, unless  
[18] you want to.  
[19] (Witness reviews document.)  
[20] A: I have read it.  
[21] Q: The only question I have for you is  
[22] whether or not looking at this document refreshes

Page 83

[1] your recollection at all about whether or not there  
[2] was any kind of a delay or problem in commencing  
[3] service to 16 West 16th Street.  
[4] A: I can't-I'm just reading it-determine  
[5] that. Whatever that negotiation was, I wasn't  
[6] directly involved in it, so I don't know what was  
[7] going on there.  
[8] Q: I see. You were just asked to sign off on  
[9] it once it was done?  
[10] A: That would appear to be the case.  
[11] Q: I would like you to turn to the book of  
[12] exhibits from Mr. Foy's deposition. Exhibit 7 to  
[13] Mr. Foy's deposition, page 23, were you involved at  
[14] all with the negotiations for service to the Wales  
[15] Hotel?  
[16] A: No, I was not.  
[17] Q: Do you recall anything as to whether or  
[18] not there was any particular urgency about  
[19] commencement of service to the Wales Hotel?  
[20] A: No, I do not. May have been, but I wasn't  
[21] aware of it.  
[22] Q: Let's take a look at Exhibit 13 of



Page 84

(1) Mr. Ontiveros' deposition. I'm not going to ask  
(2) you about all of the pages of this exhibit, so  
(3) unless you're just curious, you needn't look at all  
(4) of them.  
(5) A: Oh, I'm not curious.  
(6) Q: Again, I ask with respect to the other  
(7) ones, were you involved at all yourself in the  
(8) negotiations or the commencement of service at the  
(9) General Motors building?  
(10) A: I was involved in the negotiations, not  
(11) the commencement of service.  
(12) Q: Do you recall whether or not the date by  
(13) which Liberty would be able to offer service to  
(14) individual offices within the GM building, was that  
(15) ever a subject that came up in your negotiations,  
(16) to your knowledge?  
(17) A: No, I don't believe it did.  
(18) Q: And were you aware of whether or not there  
(19) was any kind of a dispute or disagreement between  
(20) the management of the building and Liberty  
(21) regarding an asserted delay in commencing services?  
(22) A: I don't recall if there was. If there

Page 85

(1) was, I wasn't on the receiving end of that.  
(2) Q: Based on your role as the negotiator for  
(3) the agreement with the GM building, would you have  
(4) expected to have been aware if there had been a  
(5) problem with delayed installation?  
(6) A: If there was a serious problem in any  
(7) case, it generally gets to my attention, and I  
(8) didn't get any frantic calls from GM, as I recall.  
(9) And a delay could have occurred not  
(10) because of the activation of the building, but  
(11) occurred because a particular tenant was promised  
(12) the service visit, was skipped or missed or other  
(13) reason as part from serving the building,  
(14) especially a building that size.  
(15) (Price Exhibit No. 1 was  
(16) marked for identification.)  
(17) Q: Mr. Price, you have been handed what was  
(18) marked as Exhibit 1 to your deposition. It's a  
(19) one-page document with production number 694 on it.  
(20) I would like you to take a look at it and let me  
(21) know when you are ready to answer a few questions  
(22) about it.

Page 86

(1) (Document handed to the witness, and  
(2) witness reviews document.)  
(3) A: I have read it.  
(4) Q: Okay. Again, do you have any recollection  
(5) of having received a copy of this memorandum?  
(6) A: I'm copied like I am on many documents. I  
(7) don't recall this particular memorandum.  
(8) Q: Do you recall being involved with either  
(9) the 72nd Street or 56th Street addresses identified  
(10) here?  
(11) A: No, I was not.  
(12) Q: Do you know whether or not there was a  
(13) delay in commencing construction of either of these  
(14) addresses identified on Exhibit 1?  
(15) A: No, I do not. And the memo, I gather  
(16) there was, but they did not get it to me.  
(17) Q: And you have no independent recollection  
(18) of such a delay?  
(19) A: No, I do not. But I think it gives you  
(20) the flavor of the start and stop and back and forth  
(21) between the board and the managing agent and the

Page 87

(1) department. It's not as easy as going in and  
(2) people saying yes, signing them up and hooking them  
(3) up. It's quite a deal back and forth before you  
(4) finally get the consensus to get going.  
(5) Q: I would like you to take a look at the  
(6) paragraph near the bottom of the page of this  
(7) document that begins, "as you are aware." Do you  
(8) see that?  
(9) A: Yes.  
(10) Q: The sentence says, in part, "these two  
(11) buildings were in the report since the beginning of  
(12) October," referring, apparently, to the  
(13) Installation Progress Report.  
(14) A: Right.  
(15) Q: Do you know, as of the date of this memo,  
(16) what had to happen in order for a building to  
(17) appear in the Installation Progress Report as this  
(18) memorandum asserts?  
(19) A: No, I do not. It may have been literally  
(20) the beginning of an installation process which  
(21) could have been as little as the site survey or as  
(22) much as designing the roof top where the system

Page 88

(1) within the building or as much as constructing  
(2) steel on the roof. It could be a number of things.  
(3) I don't know what operations used as the criteria  
(4) or criterion to put it on the report. That might  
(5) change as their experience changed over time.  
(6) Q: So, as far as you know, it would not  
(7) necessarily be the case in the fall of 1994 that a  
(8) building would appear on the Installation Progress  
(9) Report as soon as there was a signed contract, for  
(10) example?  
(11) A: No, I don't think that was the case, but I  
(12) don't know.  
(13) MR. BECKNER: Off the record.  
(14) (Whereupon, at 12:25 p.m., the deposition  
(15) was adjourned until 1:40 p.m., the same day.)  
(16)  
(17)  
(18)  
(19)  
(20)  
(21)  
(22)

Page 89

**AFTERNOON SESSION**  
**Whereupon,**

(1) PETER O. PRICE  
(2)  
(3) was called for further examination by counsel for  
(4) Time Warner Cable of New York City and, having been  
(5) previously duly sworn, was further examined and  
(6) testified as follows:  
(7) **FURTHER EXAMINATION BY COUNSEL FOR**  
(8) **TIME WARNER CABLE OF NEW YORK CITY**  
(9) (Mr. Kim present, Ms. Power not present.)  
(10) **BY MR. BECKNER:**  
(11) Q: Mr. Price, during the break, as I asked  
(12) you before the last break, did you have occasion to  
(13) reflect on any answer to a question that I put to  
(14) you and desire now to amend or add to that answer?  
(15) A: No, sir.  
(16) Q: All right. Then we will move along.  
(17) During the time that you have been  
(18) president of Liberty Cable, has it been involved in  
(19) advocating either before the FCC or before the  
(20) Congress amendments to the definition of cable



Page 90

[1] this year?  
[2] A: Yes, we have.  
[3] Q: Do you know when those activities began?  
[4] A: As I recall, they began in the fall of  
[5] '91.  
[6] Q: Was the amendment that Liberty sought the  
[7] amendment that ultimately was enacted this spring  
[8] in the '96 Telecom Act that would allow noncommonly  
[9] owned buildings to be connected by cable?  
[10] MR. SPITZER: Just as a foundation matter,  
[11] was there only one amendment that you are referring  
[12] to?  
[13] MR. BECKNER: A definitional amendment.  
[14] THE WITNESS: We addressed several matters  
[15] before the Congress. This was one of them.  
[16] BY MR. BECKNER:  
[17] Q: I apologize if my question wasn't clear.  
[18] One of the objectives that Liberty had was to have  
[19] an unquestioned right to link noncommonly owned  
[20] buildings through use of a cable so long as the  
[21] cable didn't cross the public right-of-way without  
[22] having a franchise? Have I got that right?

Page 91

[1] A: Well, what we sought was the clarification  
[2] of the SMATV exemptions that make it clear that we  
[3] didn't need a franchise unless we used public  
[4] rights. That's a restatement of what you said.  
[5] Q: That's fine. It's your answer here, not  
[6] my questions, so I have no problem with you  
[7] restating my question.  
[8] What other matters besides that matter was  
[9] Liberty addressing to the Congress? I think you  
[10] mentioned there were several matters?  
[11] A: There were matters of program access. We  
[12] felt we were left unclear in the '92 legislation.  
[13] Actually we lobbied for their passage in '92 for  
[14] access to their programming which was being held  
[15] hostage by the cable monopoly, and there were  
[16] matters of uniform pricing, that cable was trying  
[17] to wiggle out from its obligation to price  
[18] uniformly, and was attempting to have gradation by  
[19] the U.S. Congress, and we didn't think that was a  
[20] great idea.  
[21] Q: Now I want to ask you whether or not there  
[22] was any kind of, for lack of a better word,

Page 92

[1] lobbying activities directed at either the Congress  
[2] or the FCC to revise the licensing process for OFS  
[3] microwave licenses.  
[4] MR. SPITZER: What do you mean by the  
[5] licensing process?  
[6] BY MR. BECKNER:  
[7] Q: To make changes in how the licensing  
[8] process works.  
[9] A: I don't recall any such activity. I'm  
[10] trying to think about it, but I don't think we ever  
[11] got into lobbying anyone on how the licensing  
[12] process should take place.  
[13] Q: Let me work around that a little bit.  
[14] Maybe it will help you, maybe it won't.  
[15] The '96 Telecom Act that was passed  
[16] earlier this year contains a provision that  
[17] eliminates the requirement that microwave  
[18] applications have to be first put on public notice.  
[19] A: We did not participate in that at all.  
[20] Q: And the FCC has, I believe, promulgated  
[21] rules which are not yet effective but yet will be  
[22] effective later this year, which substantially

Page 93

[1] changed the application process for OFS licenses of  
[2] the kind that you have. Are you aware of that  
[3] factor?  
[4] A: I'm aware of it, but I don't know the  
[5] details of it. I heard the process has been  
[6] changed.  
[7] Q: And the question I wanted to ask you was--  
[8] A: I don't believe it's not yet in effect  
[9] yet, which is why we don't know about it because we  
[10] haven't gone through it.  
[11] Q: What I want to know is whether Liberty in  
[12] the past has advocated any such changes in the  
[13] licensing process.  
[14] A: No, sir.  
[15] Q: Now, did there come a time in 1995 when  
[16] you became aware that Liberty was operating some  
[17] microwave paths for which it had not yet received  
[18] an FCC license?  
[19] A: That's correct.  
[20] Q: Approximately when did that come to your  
[21] attention, if you remember?  
[22] A: I believe it was in January of '95, in

Page 94

[1] that early January--early 1995. I'm not clear  
[2] when. Somewhere in that area.  
[3] Q: At the time that you were first aware that  
[4] Liberty was operating these unlicensed microwave  
[5] paths, did you know how many such paths there were?  
[6] A: No.  
[7] Q: You just knew there were some?  
[8] A: I didn't know there were any until we  
[9] looked into it and found out.  
[10] MR. BECKNER: Can you read back the answer  
[11] to the previous question.  
[12] (Whereupon, the Court Reporter read back  
[13] the previous answer.)  
[14] THE WITNESS: Just to clarify, it was  
[15] early '95. When in '95? Sometime in the first  
[16] quarter, I believe, of '95.  
[17] BY MR. BECKNER:  
[18] Q: Sometime between January and the end of  
[19] March? Would that be fair?  
[20] A: Yes. Sometime in the first three or four  
[21] months of '95.  
[22] Q: Could have been as late as April?

Page 95

[1] A: Could have been as late as April.  
[2] Q: When you first became aware of that  
[3] situation, what was the first information you  
[4] received? For example, was it that a specific path  
[5] was unlicensed? Was it that some paths might be  
[6] unlicensed? What's the first thing that you  
[7] learned about this?  
[8] A: I believe it was some paths might be  
[9] unlicensed. I don't recall precisely what the  
[10] first communication was, but I believe it was some  
[11] paths might be unlicensed, so we began to check the  
[12] dates to determine what was or wasn't properly  
[13] licensed.  
[14] MR. BECKNER: Off the record.  
[15] (Whereupon, the Court Reporter read back  
[16] the previous answer.)  
[17] BY MR. BECKNER:  
[18] Q: What was the source of the first  
[19] information you received about the possibility that  
[20] you might have some unlicensed operating microwave  
[21] paths?  
[22] A: I believe it was from counsel.

Page 96

(1) Q: Was counsel reporting to you an allegation  
(2) that had been made in a pleading filed by Time  
(3) Warner?  
(4) A: I believe that's where they got their  
(5) information. I can't say, but I believe that's  
(6) what it is.  
(7) Q: I'm trying to be careful and not ask for  
(8) communications covered by the privilege, but simply  
(9) the reporting.  
(10) MR. SPITZER: You could ask whatever  
(11) questions you wish.  
(12) BY MR. BECKNER:  
(13) Q: When counsel reported this allegation to  
(14) you, was this in a phone conversation you had?  
(15) A: Might have been a phone conversation.  
(16) Might have been a meeting in the office. I don't  
(17) recall what the forum was.  
(18) Q: But in any event, it was a conversation as  
(19) opposed to a memo that you received from them, I  
(20) take it?  
(21) A: That's correct.  
(22) Q: When they gave you this report, did you

Page 97

(1) ask them what they knew about the issue? In other  
(2) words, whether or not they knew whether the  
(3) allegation was correct or not correct?  
(4) A: I don't recall what I asked them.  
(5) Q: And was the particular legal counsel in  
(6) question a lawyer from Pepper & Corazzini or some  
(7) other firm?  
(8) A: I believe it was the Constantine firm.  
(9) Q: I think in your supplement to one of your  
(10) earlier answers, you indicated that you then sought  
(11) to gather information once you heard these  
(12) allegations to determine whether they were correct  
(13) or not.  
(14) Can you tell me more specifically what it  
(15) was that you did to gather that information.  
(16) A: We asked the operations people, Tony  
(17) Ontiveros, Behrooz Nourain, John Tenety, to review  
(18) the installation records and begin-I believe we  
(19) got Andy Berkman involved to conform the dates the  
(20) contracts were made with the dates that the  
(21) installations were made with the dates that  
(22) licenses were applied for and the dates that

Page 98

(1) authority, either licensing or Special Temporary  
(2) Authority, was received.  
(3) Q: Was there any one person who was in charge  
(4) of this information gathering effort?  
(5) A: As I recall, it was-you mean the  
(6) information gathering I just described?  
(7) Q: Yes, sir.  
(8) A: I believe it was Tony Ontiveros and  
(9) Behrooz Nourain in conjunction with counsel at  
(10) Constantine. We put together the group to make an  
(11) analysis and determine what was not properly  
(12) licensed, if something was not properly licensed.  
(13) Q: Was the Pepper & Corazzini firm involved  
(14) in this information gathering effort?  
(15) A: Yes, they were.  
(16) Q: What information did you seek from that  
(17) firm?  
(18) A: I believe we sought from them the date  
(19) that licenses had been applied for and the date  
(20) authority was or wasn't received.  
(21) Q: Do you remember about what month this

Page 99

(1) A: Completed?  
(2) Q: Yes, sir.  
(3) A: I don't recall when it was completed, but  
(4) it was undertaken immediately when we found out  
(5) about the problem, and believe it was worked on  
(6) intensively for a month thereafter, perhaps two  
(7) months.  
(8) Q: And what was the conclusion that you came  
(9) to as a result of this information gathering  
(10) effort?  
(11) A: The conclusion was that there were,  
(12) indeed, certain paths that were activated before we  
(13) had received the authority to operate them.  
(14) Q: Do you remember how many paths there were  
(15) of this nature?  
(16) A: I think it was approximately a dozen.  
(17) Q: Was this information ever incorporated  
(18) into some written report or summary, to your  
(19) knowledge?  
(20) A: I don't recall. There was a later audit  
(21) undertaken, an extensive investigation or audit by  
(22) counsel, but I never received a copy of that audit.

Page 100

(1) There was something done at that period when we  
(2) were examining the specific licenses that  
(3) were-specific situations that were questioned that  
(4) we looked into. I don't know whether there was an  
(5) interim piece of paper there. There may have been,  
(6) but there was a lot of paper flying at that point.  
(7) Q: But you don't remember seeing it?  
(8) A: There may have been. If I saw it I might  
(9) recognize it, but I don't remember it offhand.  
(10) Q: For now, as I continue these questions, I  
(11) want you to understand that I'm not asking about  
(12) this audit report document that you have  
(13) identified, which has been the subject of various  
(14) jousting back and forth between the two sides, as  
(15) I'm sure you are well aware.  
(16) After you gathered this information, did  
(17) you come to any kind of conclusion as to who was  
(18) responsible for the fact-who within the company  
(19) and elsewhere was responsible for the fact that  
(20) these, I think you said, dozen or so paths had been  
(21) activated before a license had been received from  
(22) the FCC?

Page 101

(1) A: It was our conclusion that there wasn't  
(2) any one individual responsible, but it represents,  
(3) to my mind, anyway, confusion about who should have  
(4) been responsible and where the confusion occurred.  
(5) Q: Where did the confusion occur?  
(6) A: I believe that the confusion occurred that  
(7) when I was first involved in the process, I had a  
(8) pretty clear idea of what should be done and who  
(9) should do it and how the approvals would be  
(10) forthcoming. And after that was put in motion, I  
(11) presumed it was going to go forward that way, and  
(12) apparently it did not.  
(13) Q: In your answer you just gave me, you said  
(14) the conclusion occurred when you were involved in  
(15) the process; did I get that right?  
(16) A: Conclusion...  
(17) Q: The confusion occurred when you were  
(18) involved in the process.  
(19) A: No. After I was involved in the process.  
(20) I was pretty clear on what I thought should be done  
(21) and who was doing it. Apparently it didn't go

Page 102

[1] Q: What did you think should be done and who  
[2] did you think should be doing it?  
[3] A: Early on in the process I visited the FCC  
[4] to determine more about what was required. After  
[5] finding out what was required, consulted with  
[6] counsel about what should be done, consulted with  
[7] our consultant engineer that was on retainer at the  
[8] time, Joe Stern. Discussed it at length with Bruce  
[9] McKennon, who was then directly responsible for  
[10] these technical operations, installations,  
[11] activations. Instructed him about a procedure that  
[12] I thought should be followed.  
[13] And from my experience in obtaining the  
[14] first authority, I presumed that that would carry  
[15] forward and approvals would go forward that way.  
[16] That would have been beginning of '92, end of '91,  
[17] beginning of '92.  
[18] Q: That's when you visited the FCC?  
[19] A: That's correct.  
[20] Q: And would that also have been about the  
[21] time that you gave Mr. McKennon the procedure that  
[22] you followed?

Page 103

[1] A: Yes, it would be.  
[2] Q: Can you briefly tell me if you remember  
[3] what that procedure was that you gave Mr. McKennon.  
[4] A: As I recall, I told him that the law firm  
[5] in Washington would be responsible for preparing an  
[6] application for a path after they were notified by  
[7] us that it was desired and that we had completed  
[8] the path coordination, and that there would be  
[9] forthcoming from the FCC, on a timely basis,  
[10] authority within a short period of time after we  
[11] made the application and gone through the stated  
[12] FCC procedure that I learned in Washington.  
[13] And I transmitted that and asked for the  
[14] regular follow-up to be made on that basis going  
[15] forward, status reports checked and certain  
[16] procedures put into effect, or at least that system  
[17] should go forward as I understood it to be.  
[18] Q: And you were at that time expecting  
[19] Mr. McKennon to carry out your instructions?  
[20] A: Mr. McKennon and Mr. Ontiveros and  
[21] Mr. Nourain and counsel and those involved in going  
[22] through the process that I had gone through with

Page 104

[1] the FCC.  
[2] Q: Now, Mr. McKennon left Liberty sometime in  
[3] 1993.  
[4] A: Right.  
[5] Q: Do you remember what time of year it was?  
[6] A: I think it was midyear, approximately.  
[7] Q: Would the fact that he left the company  
[8] and that his position was never filled--there was,  
[9] I think, kind of a reorganization in a sense as you  
[10] describe it--did you believe that that was in any  
[11] way responsible for the subsequent activation of  
[12] microwave paths without licenses?  
[13] A: That lack of another layer of supervision  
[14] may have contributed to it, but I don't think it  
[15] was a trigger, I think, that we had been applying  
[16] for licenses regularly during that period and  
[17] serving buildings, so I presume that we were  
[18] getting a system into place that most people knew  
[19] and understood.  
[20] And if it was broken somehow, people would  
[21] come back to me, per my instructions, and say  
[22] whatever you sat down isn't working, is broken,

Page 105

[1] needs fixing, so can you help us, we have a  
[2] problem.  
[3] We are not a big company, so it doesn't  
[4] require a lot of memo writing to communicate.  
[5] Q: Now, during the period of '92, '93, '94,  
[6] '95, except for the operations people who are up on  
[7] 95th Street, were the rest of Liberty management  
[8] and staff located in one place? That is, in one  
[9] office building?  
[10] A: What time period?  
[11] Q: 1992 through 1995.  
[12] A: Yes. I think we were all together at that  
[13] point and one other location.  
[14] Q: So I take it that in the course of an  
[15] ordinary day, you would probably see or bump into  
[16] everybody who worked there; would that be correct?  
[17] A: No. I was in one side of the building,  
[18] they were in another, and it would be the exception  
[19] rather than the rule that I would bump into them.  
[20] Q: Who was on the side of the building where  
[21] you were at Liberty? Anyone?  
[22] A: Howard and Edward Milstein.

Page 106

[1] Customer service was on another corner.  
[2] Marketing was in another corner. And counsel, like  
[3] Andy Berkman, was in another building.  
[4] Q: I want to go back for a moment to that  
[5] initial fact-finding effort that you said you  
[6] initiated after you received word from counsel of  
[7] the allegation by Time Warner that Liberty was  
[8] operating microwave paths without licenses.  
[9] In that initial fact-finding effort, I  
[10] take it your intent was to make every effort to  
[11] uncover all such instances of unlicensed  
[12] operations; is that correct?  
[13] A: That's absolutely correct.  
[14] Q: Do you remember at what point in time you  
[15] felt reasonably confident that you had uncovered  
[16] all such incidents?  
[17] A: I can't remember precisely when, but  
[18] perhaps as I said, 30 to 60 days later after we had  
[19] gone through all the records, but I can't pin it  
[20] down.  
[21] It probably can be pegged at the time that  
[22] we asked for counsel to put together a compliance

Page 107

[1] program to make sure that we wouldn't have that  
[2] problem again.  
[3] So whenever that draft of a compliance  
[4] procedure was set down, if that's dated somewhere,  
[5] I would presume that is the date we finally fixed  
[6] it and put procedures in effect for then as it was  
[7] done right on the heels of determining the extent  
[8] of the problem. And when we understood the extent  
[9] of the problem, we put the procedure in place to  
[10] make sure it didn't happen again.  
[11] Q: I'm going to show you some documents which  
[12] may help or refresh or focus your recollection on  
[13] those dates. I realize I'm asking you a lot of  
[14] these things from memory and most people don't have  
[15] exact memory for dates. Let me show you a document  
[16] which I would like the Court Reporter to mark.  
[17] (Price Exhibit No. 2 was  
[18] marked for identification.)  
[19] MR. SPITZER: You gave me a two-page  
[20] document that I don't think is one document,  
[21] though.  
[22] MR. BECKNER: That's the way we received

Page 108

(1) it. I will state that for the record, since we are  
(2) on the record.

(3) MR. SPITZER: Then they're not sequential  
(4) Bates numbers.

(5) MR. BECKNER: I will address that.  
(6) Somebody made a mistake in your office.

(7) BY MR. BECKNER:

(8) Q: You have been handed what was marked as  
(9) Exhibit 2 to your deposition. It's two pages with  
(10) production number 1702 and 15703 on it.

(11) MR. BECKNER: I will note for the record  
(12) that I'm advised by my colleagues sitting at the  
(13) table that there are--there is, in fact, another  
(14) document in Liberty's production with the number  
(15) 1702 on it. We received this document from you  
(16) just the way it is.

(17) And I would suggest that perhaps someone  
(18) made an error in the setting of the Bates machine.  
(19) This was a late-produced document.

(20) MR. WEBER: There is no document with the  
(21) number 15702, and we were assuming this one--this  
(22) came right on top of the first page with the 1702

Page 109

(1) produced right on top of 15703, so we assume that  
(2) was meant to be 15703.

(3) MR. SPITZER: We have no idea.

(4) MR. BECKNER: There is another 1702.

(5) MR. SPITZER: What your saying is logical,  
(6) but we don't know in fact that's what happened. We  
(7) could check.

(8) THE WITNESS: All right.

(9) BY MR. BECKNER:

(10) Q: You heard the back and forth between  
(11) counsel about the numbers here, and the first  
(12) question I want to ask you is, do you recall  
(13) writing the first page of this memo?

(14) A: Yes, I do.

(15) Q: And looking at the second page, do you  
(16) believe that to be the second page of the first  
(17) page?

(18) A: I believe it is.

(19) Q: Does that appear to you to follow the  
(20) first page?

(21) A: It does follow.

(22) Q: Now, before I ask you some detailed

Page 110

(1) questions about the contents of the memorandum, I  
(2) want to ask you if looking at this now, does that  
(3) refresh your recollection about some of the dates  
(4) that I have been asking about, in particular about  
(5) when your initial finding was completed?

(6) A: That would fit.

(7) Q: So this has a handwritten date of 7/13/95  
(8) on it. Is that your handwriting? Can you tell?

(9) A: Where is this? No, that's not my  
(10) handwriting.

(11) Q: Do you have any recollection of when you  
(12) wrote this memorandum?

(13) A: Again referring back to the sequence, as I  
(14) recall, we ferreted out or at least narrowed in on  
(15) what the problems were, say, 60 days after we found  
(16) out about them. If we found out in April, for  
(17) example, then we would have developed a procedure  
(18) or talked through a procedure by midyear to put  
(19) into effect a new policy, and it would appear to be  
(20) the result of that spring conversation or dialogue  
(21) which led to a new policy in roughly midyear. But

Page 111

(1) Q: With respect to this 7/13/95 written here,  
(2) I understand you testified it's not your writing,  
(3) and the only question I want to ask you is based on  
(4) whatever you can recall, do you believe that you  
(5) wrote this memorandum at about July 13th, '95? Not  
(6) the precise date, but about that period?

(7) A: That would sound about right. Could have  
(8) been a few weeks earlier, but in that time frame.

(9) Q: Now, the first paragraph of the memorandum  
(10) on the first page, is what's described there the  
(11) thing you that previously referred to in another  
(12) answer as the audit report?

(13) A: Yes.

(14) Q: That is describing the process of creating  
(15) the audit report?

(16) A: Yes.

(17) Q: Now, in the second paragraph you write,  
(18) "in order to reconcile buildings on the tracking  
(19) report with those in our marketing and installation  
(20) reports," et cetera, can you tell me what the  
(21) tracking report was that you're speaking of in this  
(22) paragraph?

Page 112

(1) A: It's referred to in the last sentence of  
(2) the third paragraph. Pepper & Corazzini, we asked  
(3) them to put together a full report of when  
(4) buildings were requested for a license and when  
(5) path coordination occurred, when FCC filings  
(6) occurred, dates the FCC authorities were  
(7) forthcoming for either licenses or Special  
(8) Temporary Authority. We asked them to go back  
(9) historically and prepare that for everything in our  
(10) database plus work in progress going forward.

(11) As I recall, part of the challenge of  
(12) getting this piece of paper done was just getting  
(13) that tracking report and accessing the FCC records.  
(14) And as I recall, there are a lot of discrepancies  
(15) there, not just things we had to reconcile with in  
(16) our records, but things that the FCC had to  
(17) reconcile with their records to get us the  
(18) information they needed to complete the report. It  
(19) wasn't as simple as picking up the phone.

(20) Q: Well, did the Pepper & Corazzini firm have  
(21) in their office copies of all the applications that  
(22) they had filed with the FCC on Liberty's behalf?

Page 113

(1) A: I presume so, but I don't know. I didn't  
(2) ask that question. I know there was a substantial  
(3) amount of conversation required with the FCC to  
(4) provide all the dates and times and activities  
(5) required to fill out the report.

(6) Q: Now, when the FCC issues a grant, either a  
(7) Special Temporary Authority or operating authority,  
(8) for a particular path, it sends back a piece of  
(9) paper to someone. Have you seen one of those at  
(10) some point in your career?

(11) A: At some point I did, but for a long period  
(12) I did not. I was not involved directly in that  
(13) loop early on when I was directly involved.  
(14) Counsel was in receipt of that, but it didn't pass  
(15) on to me.

(16) Q: Prior to the middle of 1995, did anyone at  
(17) Liberty, to your knowledge, maintain a file in  
(18) which those grants from the FCC or copies of them  
(19) were kept?

(20) A: I believe it was maintained at operations  
(21) headquarters, the technical operations center. It

Page 114

(1) responsible for that process in the company. I  
(2) presumed it was there and/or with counsel.  
(3) Q: Did you assume that counsel had copies of  
(4) any grants that were received?  
(5) A: Yes.  
(6) Q: So I take it that even without going to  
(7) the FCC, it would have been possible to have  
(8) determined what applications Liberty had filed for  
(9) microwave paths; is that correct?  
(10) A: I don't know. I mean, you're asking me--  
(11) MR. SPITZER: The fact or his belief?  
(12) BY MR. BECKNER:  
(13) Q: Your belief.  
(14) A: I believe those people who had the records  
(15) could put it together, but I didn't have access to  
(16) their files or maintain their files, so I can't  
(17) answer the question for them. Is that fair?  
(18) Q: It's your deposition. You can only  
(19) testify about what you know or remember, and that's  
(20) what you're doing. That's fine.  
(21) Let me get at it another way. Why was it  
(22) necessary to contact the FCC in order to get the

Page 115

(1) information that you needed to get to compile the  
(2) report that you discussed here in this memorandum?  
(3) A: I don't know. I wasn't involved in  
(4) talking to the FCC or creating the tracking report,  
(5) so I don't know the answer to that. I only knew  
(6) there were substantial conversations with  
(7) Washington or Gettysburg. I wasn't a party to  
(8) those conversations.  
(9) Q: Do you recall at the time of this  
(10) memorandum being surprised that it was necessary to  
(11) find out from the FCC about the status of Liberty's  
(12) applications and the status of Liberty's grants  
(13) from the FCC?  
(14) A: I was apprised that there was that much  
(15) confusion about who was doing what to whom, yes.  
(16) Q: Now, in the four categories that you have  
(17) created here, A, B, C, D in the middle of the page?  
(18) A: Yes.  
(19) Q: I just want to establish what each of the  
(20) categories mean. This may be semantics here, but  
(21) does category A mean buildings where you activated  
(22) paths without a license?

Page 116

(1) A: Yes.  
(2) Q: So it's not a flawed license. There is no  
(3) license at all; correct?  
(4) A: At the time I wrote this, I don't think I  
(5) was even clear on that. I knew this was where we  
(6) had a problem, so somebody told me that we didn't  
(7) have the proper authority. All right? What that  
(8) meant precisely and did someone give me a legal  
(9) memorandum on that, not that I recall. I knew we  
(10) had trouble here.  
(11) Q: Now, the second category, activated  
(12) buildings served by hard wire where we applied for  
(13) backup licenses, what was that category? What did  
(14) that mean?  
(15) A: That means where we were serving a  
(16) building by an interconnection within the same  
(17) block and wanted to assure that in every possible  
(18) case we needed or might need in the future an FCC  
(19) license, that we had applied properly for  
(20) everything possible and going through every  
(21) procedure possible and required to make it happen.  
(22) So if there was anything out there that we

Page 117

(1) were about to serve, could serve, might serve, I  
(2) didn't want anymore nasty surprises like this one.  
(3) Q: So, for example, these activated  
(4) buildings, these were buildings where you were  
(5) already serving with the hard wire.  
(6) A: Yes.  
(7) Q: And if you were ordered by some  
(8) governmental authority to stop serving them by hard  
(9) wire, you wanted to have--  
(10) A: Or the landlord changed his mind and  
(11) didn't want us to use the connection through the  
(12) backyard anymore, and we might have to get an FCC  
(13) license or he didn't renew the Liberty contract at  
(14) its term, then we might need an FCC license to  
(15) supply that other building directly. Or they build  
(16) a building or there was some break in the wire  
(17) because of construction and we needed a backup  
(18) facility. Any reason whatsoever in the interest of  
(19) caution and prudence, let us apply for it.  
(20) Q: Now, the third group is nonactivated  
(21) buildings under contract.  
(22) I take it that group of buildings is

Page 118

(1) buildings that you needed an FCC license to serve,  
(2) and the license application was sitting at the FCC  
(3) without having been acted on?  
(4) A: That's correct.  
(5) Q: And the third group is buildings where you  
(6) were still in negotiations to conclude a contract.  
(7) Strike the question.  
(8) The fourth group includes buildings where  
(9) you were still negotiating for a contract which you  
(10) had received the contract you intended to serve by  
(11) means of microwave?  
(12) A: Yes. More specifically, we were in final  
(13) contract negotiations, rather than submit hundreds,  
(14) which was perhaps the number of buildings we were  
(15) talking to and negotiating with, those that were  
(16) likely to require a license or likely to go to  
(17) contract in the next few months.  
(18) Q: Now, in the last paragraph on the first  
(19) page I want you to clarify for me the meaning of  
(20) that first sentence that says, "we may want to  
(21) apply two paths to all commercial as well as  
(22) residential sites..."

Page 119

(1) Did you mean both a cabled path as well as  
(2) a microwave path? Is that what you meant by  
(3) microwave paths?  
(4) (Witness reviews document.)  
(5) A: I don't know what I meant there, to tell  
(6) you the truth. I think I meant apply for a path to  
(7) commercial buildings as well as--I don't think I  
(8) stated it very well, as well as residential  
(9) buildings, even though in a commercial building it  
(10) may not be--it may not be required as much--it's  
(11) unclear to me what I meant there. I can't figure  
(12) it out.  
(13) Q: You can't tell me whether or not the two  
(14) paths meant one microwave path and one cable path?  
(15) A: I don't think so. Perhaps when I was  
(16) closer to it, I would understand that, but I don't  
(17) now.  
(18) Q: Now, continuing on that paragraph, you  
(19) wrote, (reading) two buildings appear to lack any  
(20) coordination initiative.  
(21) A: Right.  
(22) Q: What does that mean?

Page 120

(1) A: I think it means that the two buildings  
(2) not only lacked the proper authority, but hadn't  
(3) been from the record properly coordinated. But  
(4) they were being served by hard wire, but apparently  
(5) no path coordination was initiated. That's all I  
(6) can gather from that.

(7) Q: Now, the final sentence may or may not  
(8) shed light on the previous one. It says, (reading)  
(9) one was coordinated but lacks follow-up, and the  
(10) New Jersey site was not part of our lawsuit which  
(11) encompasses all New York sites.

(12) A: I think the reference there was because  
(13) the hard wire paths had been challenged as not  
(14) authorized because they were cable systems that we  
(15) should, in prudence, supply microwave backup. On  
(16) the other hand, the challenge was, as I recall,  
(17) made in New York State, so New Jersey, the one  
(18) property in New Jersey that was served by hard wire  
(19) wouldn't require the backup like New York might.

(20) Q: Was that property in New Jersey the  
(21) Lincoln Harbor Yacht Club? Does that sound  
(22) familiar to you?

Page 121

(1) A: It sounds familiar. It could be. I'm not  
(2) familiar with it. I haven't been to that property.

(3) Q: With respect to New Jersey, had there  
(4) been-

(5) A: I think I followed out the lapse in my  
(6) understanding of this.

(7) If when the first line of the last  
(8) paragraph where it says we may want to apply, I  
(9) suspect the word "to" should be the word "for," and  
(10) then it makes sense. I think that's a typo. And  
(11) that's why I'm losing my mind here, "on the 'B'  
(12) list, we may want to apply for all paths to  
(13) commercial as well as residential," then it reads  
(14) well. So it's a typo which would read a lot better  
(15) if it was "for" rather than "to" because the "to"  
(16) didn't make any sense. That certainly helps me.

(17) Q: So when you say you want to apply for  
(18) paths, you mean microwave paths?

(19) A: Yes.

(20) Q: Those buildings were served by hard wire  
(21) and microwave would be a backup?

(22) A: Yes, backup, and do that for the

Page 122

(1) commercial as well as residential. So the purpose  
(2) of that paragraph is to add commercial as well as  
(3) residential to the backup list.

(4) Q: Let's go back to this New Jersey site. I  
(5) was going to ask you a question about that when you  
(6) supplemented your previous answer.

(7) I take it that with respect to New Jersey  
(8) there was no initiative or controversy about  
(9) occasional franchise in contrast to what was going  
(10) on in New York.

(11) A: No, there was not. Not that I know of.

(12) Q: Now, I'm going to show you another  
(13) document after the Reporter marks it.

(14) (Price Exhibit No. 3 was  
(15) marked for identification.)

(16) Q: Let me note for the record, Mr. Price, on  
(17) the second page of Exhibit 2 what we have been  
(18) looking at, the last sentence of the memo says,  
(19) (reading) note that Mike Lehmkuhl has already  
(20) responded to my draft with the attached additions  
(21) and corrections.

Page 123

(1) marked as Deposition Exhibit Number 3, which is a  
(2) table, and I would just like you to take a look at  
(3) that and tell me, if you can, whether or not you  
(4) believe this table was attached to the memo that's  
(5) been marked as Exhibit 2.

(6) A: As I recall, that was the format of what I  
(7) had attached. Whether this is precisely the  
(8) document, I don't know, but it's certainly the  
(9) format.

(10) Q: Let me read into the record the production  
(11) numbers on Price Exhibit 3. They are from 15704  
(12) through 15712 inclusive.

(13) Do you want anymore time to look at this  
(14) document before I ask you any questions about it?

(15) A: No. You can ask them.

(16) Q: Do you know whether or not the initial  
(17) format of this document--that is, the A list, the B  
(18) list, C list, et cetera--was that something that  
(19) was set up by you or by someone working at your  
(20) direction, like your secretary or assistant?

(21) A: I think we collectively devised it as a  
(22) good way to start to align the information.

Page 124

(1) Whether I did or my secretary set it up that way or  
(2) counsel gave it to me that way, I don't recall.

(3) Q: Looking at the first page of the document,  
(4) the A list, I note that for the first three  
(5) buildings in the top of the list, there is no  
(6) application date and no STA application date in the  
(7) respective columns. You see that?

(8) A: Yes.

(9) Q: Does that mean at least as of the time  
(10) when this list was prepared, you were unable to  
(11) determine that an application had been filed for  
(12) these three buildings?

(13) A: Yes. This was constantly updated as more  
(14) information was received, and this began with just  
(15) a patchwork of information that was gradually  
(16) filled in.

(17) Q: And that would also be true for the  
(18) building described as Liberty Terrace, which has no  
(19) application date and no STA application date?

(20) A: Yes. I mean, it might be that the data  
(21) wasn't available. It might be that the license  
(22) hadn't been applied for. It might be that it was

Page 125

(1) served by hard wire and the license was decided not  
(2) to be applied for. It could be for any number of  
(3) reasons, so I can't tell from the face of the  
(4) document.

(5) Q: Do you have any independent recollection  
(6) aside from what the document may tell you?

(7) A: No, I don't.

(8) Q: I note that in the column to the left of  
(9) the application date is a column "path coordination  
(10) date."

(11) What does that refer to you, if you know?

(12) A: I presume it's the date that the path  
(13) coordination firm had completed the coordination or  
(14) could have begun the coordination but the date at  
(15) which coordination was done.

(16) Q: Okay. For those four buildings that I  
(17) just asked you about, you note that the  
(18) coordination date is given as July 3rd, 1995. You  
(19) see that?

(20) A: Yes.

(21) Q: You understand that one of the parts of



Page 126

[1] the FCC is the frequency coordination for the path  
[2] for which you are seeking licenses?

[3] A: That's correct.

[4] Q: So, for these four buildings where the  
[5] coordination was done on July 3rd, 1995, an  
[6] application could not have been filed prior to that  
[7] that would be complete; is that correct?

[8] A: Yes, I would presume so, that being the  
[9] procedure.

[10] Q: And those dates would also suggest that  
[11] this Price Exhibit 3 that we are looking at was  
[12] prepared sometime after July 3rd, 1995?

[13] A: Yes.

[14] Q: Do you know whether or not this document  
[15] that's Exhibit 3 went through successful drafts?

[16] A: It did go through successful drafts. As I  
[17] said, the information was accumulated, and as it  
[18] was accumulated, it was added to the sheets.

[19] Q: Do you know what happened to the earlier  
[20] drafts of this document? In other words, you just  
[21] said that as this new information would come in, it  
[22] would be added to the sheets. The previous

Page 127

[1] versions of the sheets in those circumstances, what  
[2] happened to them? Were they thrown away?

[3] A: I didn't prepare them. I don't know.

[4] There might have been one draft. There might have  
[5] been 12. I don't know.

[6] Q: Do you recall having seen more than one  
[7] version of Price Exhibit 3?

[8] A: Yes, I recall having seen more than one  
[9] version.

[10] Because often, even from the Marketing  
[11] Department certain buildings were under negotiation  
[12] or not under negotiation, certain buildings would  
[13] end up transposed on to one list which was through  
[14] clerical error which should be on another list, et  
[15] cetera.

[16] Q: So I take it that you're unable to tell me  
[17] whether or not this particular version of the  
[18] table, which has been marked as Price Exhibit 3,  
[19] was attached to the memorandum that is Price  
[20] Exhibit 2?

[21] A: No, I cannot say for sure.

[22] Q: I would like you to take a look at the "B"

Page 128

[1] list, which is in the table for 152 West 57th  
[2] Street and 120 East End Avenue. There is an STA  
[3] application date of 7/12/95. Do you see that?

[4] A: Yes.

[5] Q: What I want you to tell me, if you can, is  
[6] whether or not the dates that are in this last  
[7] claim, the STA application dates, are as far as you  
[8] know the dates when these applications actually  
[9] were filed.

[10] A: I can't tell you that. I only know what I  
[11] see here. I didn't do the filing.

[12] Q: Well, in terms of requesting the  
[13] information that ultimately made its way into the  
[14] report, was it your intent that the information  
[15] that would go into this column would be the date  
[16] for when something happened?

[17] A: That's correct.

[18] Q: Not the date when it's planned to happen.

[19] A: Precisely right.

[20] Q: And what I'm getting at here is simply an  
[21] attempt to further date this document that we are  
[22] looking at.

Page 129

[1] And so the question I would ask you is,  
[2] based on seeing these dates of July 12, 1995, as  
[3] STA application dates, would it be fair to assume  
[4] that that document was prepared after July 12?

[5] A: That is correct.

[6] Q: I think that's about the best we are going  
[7] to do today with this document.

[8] MR. BECKNER: Off the record for a second.  
[9] (Discussion off the record.)

[10] BY MR. BECKNER:

[11] Q: Mr. Price, I'm going to show you what was  
[12] previously marked as Exhibit 32 to Mr. Foy's  
[13] deposition, and I will represent to you that it's a  
[14] copy of Appendix A and Appendix B to the Hearing  
[15] Designation Order from the FCC in this case.

[16] (Document handed to the witness, and  
[17] witness reviews document.)

[18] A: Yes.

[19] Q: Okay. If you note, I'm going to direct  
[20] your attention primarily to Appendix A, and you  
[21] note that by some of the addresses there are little  
[22] asterisks, and at the bottom of the page the

Page 130

[1] appendix says Liberty activated service on these  
[2] paths prior to applying for the license. Do you  
[3] see that?

[4] A: Yes, I do.

[5] Q: As you sit here now, do you have any  
[6] reason to believe that the assertion made in this  
[7] Appendix A, that the asterisked paths were  
[8] activated before a license was applied for, was  
[9] incorrect?

[10] A: I have no reason to believe it's  
[11] incorrect.

[12] Q: If you go back to your Exhibit 3, Price  
[13] Exhibit 3, which is still before you, if you look  
[14] at 440 East 56th Street, which is the top entry on  
[15] the "A" list of Price Exhibit 3?

[16] A: Right.

[17] (Telephone conference call with Judge  
[18] Sippel at 3:20 p.m.)

[19] JUDGE SIPPEL: Good afternoon.

[20] MR. BECKNER: This is Bruce Beckner at  
[21] Fleischman and Walsh. We are here in my firm's  
[22] conference room in Washington, and we have been

Page 131

[1] taking the deposition of Mr. Peter Price, and it's  
[2] the time of day for us to call you. We have  
[3] Mr. Weber and Mr. Keam of the Wireless Bureau and  
[4] Mr. Holt of Cablevision and myself on behalf of  
[5] Time Warner. And we have Messrs. Spitzer and  
[6] Begleiter on behalf of Liberty. And we also have a  
[7] Court Reporter who, at our request, is making a  
[8] record of the proceeding.

[9] We have a number of things to ask you  
[10] about, and I will let Mr. Weber start first, if  
[11] that's okay.

[12] MR. WEBER: Yes, Your Honor. This is Joe  
[13] Weber with the Wireless Bureau.

[14] JUDGE SIPPEL: Good afternoon.

[15] MR. WEBER: Our contact with Mr. Stern,  
[16] who we scheduled to be a witness this coming  
[17] Friday, he was one of the contractors for Liberty,  
[18] he had informed us that this past weekend his wife  
[19] went into cancer surgery and she is getting out of  
[20] the hospital later this week or may still be in the  
[21] hospital later this week, and he would prefer not  
[22] to come on Friday but is willing to come next

Page 132

[1] Tuesday or Wednesday, which, of course, is beyond  
[2] the deadline you set for discovery. However, in  
[3] light of the circumstances, we would request that  
[4] we be allowed to depose him either next Tuesday or  
[5] next Wednesday.

[6] JUDGE SIPPEL: Consider that done.

[7] MR. BEGLEITER: Liberty has no objection.

[8] JUDGE SIPPEL: Thank you. I assume that  
[9] would be in everybody's interest.

[10] MR. BEGLEITER: The second issue, Your  
[11] Honor, is if you recall during the deposition of  
[12] Edward Foy, which was a week ago yesterday, Your  
[13] Honor requested a sequestration order with regard  
[14] to witnesses and my clients.

[15] JUDGE SIPPEL: Correct.

[16] MR. BEGLEITER: And I look at 47 CFR  
[17] 1.301(b), which gives me the opportunity to request  
[18] from you an appeal, by leave of Your Honor, to the  
[19] Commission on that ruling. I believe the ruling  
[20] presents a novel question as to whether the client  
[21] can be barred from reviewing the deposition  
[22] transcripts and also from being told what

Page 133

[1] transpired at the deposition specifically with  
[2] regard to the questions and answers.

[3] So I would respectfully request, pursuant  
[4] to 47 CFR 1.301(b) that we be given leave to appeal  
[5] to the Commission.

[6] JUDGE SIPPEL: Let me hear from—who wants  
[7] to answer that? The Bureau? Mr. Beckner?

[8] MR. WEBER: Well, we certainly have no  
[9] objection to appealing it. We will file an  
[10] opposition to the appeal, but if he feels the need  
[11] to go to the Commission to try to appeal it, we  
[12] don't oppose that.

[13] JUDGE SIPPEL: You don't oppose an appeal,  
[14] Mr. Beckner?

[15] MR. BECKNER: Yes. I would like to get a  
[16] clarification from Mr. Begleiter as to what exactly  
[17] disturbs him about your ruling. It sounds like  
[18] what he's concerned about now is that he would be  
[19] unable, after a witness is deposed, to show that  
[20] witness in advance of the hearing the transcripts  
[21] of other witnesses' depositions.

[22] Is that right, Bob?

Page 134

[1] MR. BEGLEITER: I would say it's both, and  
[2] on its own terms we want to appeal Your Honor's  
[3] ruling last week as it applies to depositions and  
[4] discovery. And Mr. Beckner and I had a  
[5] conversation before the telephone conference that  
[6] Your Honor would issue the same sort of ruling  
[7] prior to the hearing, if requested, by one of the  
[8] parties.

[9] JUDGE SIPPEL: Wait a minute now. Let's  
[10] take these one at a time. We are talking about  
[11] getting the independent recollection of witnesses  
[12] to essentially the same factual situation.  
[13] Otherwise, there wouldn't be a concern about this.  
[14] But that has got nothing to do with preparing for  
[15] the hearing.

[16] MR. BEGLEITER: In other words, there  
[17] would be no sequestration of witnesses—I will be  
[18] permitted to—

[19] JUDGE SIPPEL: I'm sorry?

[20] MR. BEGLEITER: I would be permitted to

Page 135

[1] JUDGE SIPPEL: Well, yes, I would rule  
[2] that way, unless again there was a specific reason  
[3] or a specific basis or a specific situation which  
[4] could be unique in this case as to why I should  
[5] grant that kind of relief. The sequestration that  
[6] we would grant at the hearing is not to have a fact  
[7] witness that's going to testify to the same matter  
[8] to be in the courtroom while others testified.

[9] Now, I may make some modification of that  
[10] for purposes of the officers, the Chief Executive  
[11] Officer, but the easy answer to that is he just  
[12] goes first, but that's at the hearing. That's a  
[13] whole different ball of wax.

[14] MR. BEGLEITER: Without letting us get  
[15] ahead of ourselves, we would like to appeal your  
[16] ruling of last week and see where that goes. We  
[17] want to preserve that right at this point.

[18] MR. BECKNER: Your Honor, this is Bruce  
[19] Beckner again. What I'm understanding from your  
[20] comment is that your view of the scope of your  
[21] order is that it affects depositions only and does  
[22] not affect what happens at the hearing or before

Page 136

[1] the hearing, and presumably any party could come to  
[2] you before the hearing and ask for some further  
[3] sequestration order.

[4] JUDGE SIPPEL: That's always available. I  
[5] mean, the opportunity to request the sequestration  
[6] order is available. What I'm telling Mr. Begleiter  
[7] I'm telling everybody right now. Right here  
[8] sitting here today, I'm not prepared to say that  
[9] depositions can't be shown to witnesses. That is,  
[10] the depositions of other witnesses can't be shown  
[11] to persons who are going to testify at the hearing.

[12] MR. BECKNER: Okay.

[13] JUDGE SIPPEL: That's a whole different  
[14] thing.

[15] Again I want to go back to why I gave  
[16] Mr. Beckner the relief he wanted in this situation,  
[17] and that is because the depositions are the first  
[18] time you get a chance to put these witnesses on the  
[19] record. What I want to see is their independent  
[20] recollection of what happened.

[21] MR. BECKNER: I understand that, Your  
[22] Honor, and that was the basis of my request at the

Page 137

[1] time and the response I would have to  
[2] Mr. Begleiter's motion.

[3] Now that I understand Your Honor's view of  
[4] the rulings, I think it's silly for him to appeal  
[5] your ruling because by the time it's decided, it's  
[6] going to be moot, the depositions are going to be  
[7] over, and you just told us the ruling does not  
[8] apply to the hearing itself.

[9] JUDGE SIPPEL: That's correct.

[10] MR. BECKNER: So I would oppose the appeal  
[11] on that basis, on the fact that it's going to be  
[12] moot at the time it's decided.

[13] JUDGE SIPPEL: That too is correct.  
[14] However, again so that everybody is forewarned on  
[15] this and this is what my normal procedure is, at  
[16] the hearing I do not permit fact witnesses to be in  
[17] the room to listen to people who are going to  
[18] testify to the same thing before they testify.

[19] And as I said, I may throw an exception to  
[20] that for purposes of permitting the Chief Executive



Page 138

(1) that is to have the Chief Executive Officer testify  
(2) first, and then he could sit there or she could sit  
(3) there and listen to the whole thing and don't have  
(4) to worry about testimony being crafted even  
(5) inadvertently.

(6) I'm not suggesting that this is going to  
(7) be a big schematic device to upset the credibility  
(8) of witnesses. I'm simply saying it's human nature  
(9) that you're going to get your own recollection  
(10) clouded if you hear somebody else talk about the  
(11) same situation at the same time.

(12) **MR. BEGLEITER:** My client would like to  
(13) insure that the issue that is raised by the  
(14) sequestration order of last week be preserved, and  
(15) although I understand what Mr. Beckner is saying,  
(16) we would ask permission to file an appeal with the  
(17) Commission.

(18) **MR. HOLT:** This is Mr. Holt. I'm not  
(19) certain Mr. Begleiter made the showing necessary to  
(20) sustain the ruling that he seeks. He's made a  
(21) general assertion that raises a novel issue, but  
(22) other than that, he hasn't provided any supporting

Page 139

(1) information to sustain that argument. So on that  
(2) basis, his request can be denied.

(3) **MR. BEGLEITER:** I have done a little bit  
(4) of research and I cannot find the case in which the  
(5) party was foreclosed from either reading  
(6) depositions or from being told what occurred at the  
(7) depositions, and I believe that is a novel ruling.

(8) I will point out when the ruling was  
(9) requested, no one cited us to a portion of the  
(10) regulations or cited to a case. I don't believe a  
(11) case like that is in evidence. In it's analogous  
(12) to Federal Rule of Evidence 15 which permits  
(13) sequestration at trial, which Your Honor would  
(14) recognize does not go so far as to sequester a  
(15) party.

(16) **JUDGE SIPPEL:** I told you how I would  
(17) handle that. I don't see this as being--this is an  
(18) interlocutory ruling. You want to take it up to  
(19) the Commission on the basis of it being a novel  
(20) question of law, I don't see it that way. But I'm  
(21) waiting to hear from everybody else before I rule  
(22) on this. I heard from Mr. Holt, Mr. Beckner, and I

Page 140

(1) heard from Mr. Weber. Is there anybody else who  
(2) wants to take a position on this?

(3) (No response.)

(4) **JUDGE SIPPEL:** Then the only other  
(5) question I have is, I'm not inclined to do this,  
(6) but if I should grant the right to take an appeal,  
(7) what happens to the rest of the depositions?

(8) **MR. BEGLEITER:** We are not asking them to  
(9) be adjourned.

(10) **JUDGE SIPPEL:** What's the point of taking  
(11) up the intermediate appeal? You heard what my  
(12) prospective ruling is with respect to sequestration  
(13) at the hearing. I don't hear anybody asking that  
(14) these depositions be kept from witness preparation  
(15) before the hearing.

(16) Mr. Beckner, what's your position on that?

(17) **MR. BECKNER:** My position is that any  
(18) witness who has already been deposed should be  
(19) permitted to review whatever he or she wants to  
(20) review prior to the hearing.

(21) I would be concerned for the same reasons  
(22) that Your Honor was concerned about a hearing

Page 141

(1) witness who had not been deposed, reviewing all of  
(2) this other material for the same reasons that you  
(3) brought up, and that is that there is no record of  
(4) the witness's unrefreshed and independent  
(5) recollection of the events in question.

(6) **JUDGE SIPPEL:** That creates a whole  
(7) different series of considerations with respect to  
(8) some witness who is put on a witness list who  
(9) hasn't been flagged up at this point for  
(10) deposition, of course with the exception of  
(11) rebuttal witnesses. And then we get into a whole  
(12) different situation.

(13) But from what I heard thus far, I don't  
(14) see any purpose. I certainly don't think this is a  
(15) novel issue. I think rulings like this are made on  
(16) a day-to-day basis in trial courts. I'm not saying  
(17) the rules are all going to be the same, but they  
(18) are not going to be uniform because the nature of  
(19) the ruling like this is you have to take it based  
(20) on the situation as the trial judge sees it at that  
(21) particular time.

(22) In light of the haste at which this case

Page 142

(1) is being put together, I can't run the risk of  
(2) having independent recollections being adversely  
(3) affected in some way. It could easily happen, as I  
(4) said. From my vantage point, it could easily  
(5) happen.

(6) So my determination is that there hasn't  
(7) been a showing of novel issue made here, and  
(8) particularly in light of my prospective ruling with  
(9) respect to the use of these depositions in hearing  
(10) preparation, I don't see where there is any  
(11) prejudice shown, really. I really don't. I'm not  
(12) asking Mr. Begleiter or Mr. Spitzer to agree to  
(13) that.

(14) **MR. BEGLEITER:** It is our position, Your  
(15) Honor, that this prejudices--I don't want to  
(16) belabor this, Your Honor, but the only point I make  
(17) is if we take it up to the Commission, the  
(18) Commission rules before the hearing, it may alter  
(19) the way in which the depositions are accepted at  
(20) the hearing. But again I'm not going to belabor  
(21) the argument any further.

(22) **MR. WEBER:** Your Honor, this is Joe Weber

Page 143

(1) with the Bureau.

(2) I could speak about what the Commission  
(3) would rule before the hearing. Since the  
(4) Commission would likely consider this a moot point,  
(5) I think it would be very unlikely the Commission  
(6) would rule prior to the deposition that exceptions  
(7) would be due in this proceeding, and therefore I  
(8) can't see the Commission acting quickly on this  
(9) because it's not an important issue, and there is  
(10) no need for timely decision. I wouldn't expect a  
(11) decision in less than a year. They could make  
(12) exceptions to whatever initial decision you could  
(13) come out with to raise this issue and it will get  
(14) reached as timely as their motion now.

(15) **JUDGE SIPPEL:** I will make no comment to  
(16) that exception. I recognize that the Bureau does  
(17) not disagree with my ruling.

(18) I don't think I have to restate that, but  
(19) since I'm making these rulings on the record, I  
(20) probably should. This again does not preclude  
(21) Mr. Begleiter and Mr. Spitzer or anyone else who is  
(22) representing Liberty's interests from going over